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Supreme Court, U.S.
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No. 101321

IN THE

SUPREME COURT of the UNITED STATES

JAMES J. REYNOLDS

Petitioner

v.

THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

Respondent

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Plaintiff-Appellant exhausted administrative remedies pertaining to the FOIA request denials by the Executive Office for United States Attorneys (EOUSA), and Office of the Inspector General (OIG) in the United States Department of Justice (USDOJ) or should have to do so twice before filing suit in federal court.
2. Whether either the EOUSA, the US Attorneys, or the OIG may have conducted a search for and found records, wherein the first two hours and first 100 pages of records would have been free, but, nonetheless, failed to provide them to the appellant without requiring him to make another FOIA request.
3. Whether some improper exercise of executive or legislative authority rendered records sought in the Freedom of Information Act (FOIA) requests unresponsive where otherwise they would have been responsive.
4. Whether the Appellate Court was correct to uphold the district court's grant of summary judgment and dismissal of the complaint to the defendant, where there was an issue of material fact: neither the EOUSA nor the OIG averred that they conducted a search for records in response to Reynolds's FOIA requests.
5. Whether the release of the records sought in the FOIA requests would be in the public interest to entitle Reynolds to a fee waiver.
6. Whether the nature of the information sought in the FOIA requests rendered the Complaint frivolous.

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Mr. James Reynolds respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case: *Reynolds v. Attorney General of US*, No. 09-3675-cv Court of Appeals, 2nd Circuit 2010.

OPINION BELOW

The date of the Order denying a rehearing *en banc* is November 19, 2010, app. 1a, and the Summary Order in *Reynolds v. Attorney General of US*, No. 09-3675-cv Court of Appeals, 2nd Circuit 2010, dated August 26, 2010, app. 2a-7a, which affirmed the District Court's opinion is available on line by following the decisions link at http://www.ca2.uscourts.gov. The date of the district court's Judgment, app. 75a, and Memorandum Opinion and Order in *Reynolds v. Attorney General of US*, No. 09 Civ. 0434, 2009 (S.D.N.Y. Jul 7, 2009) is July 7, 2009, app. 68a-74a. *See Reynolds v. Attorney General of the United States of America*, NYLJ, July 14, 2009, at 35, col. 3. The date of the Order denying the motion to reconsider, meanwhile, is July 16, 2009. App. 76a-78a.

JURISDICTION

The district court had original jurisdiction over the appellant's suit pursuant to 28 U.S.C. § 1331, because it arose under the Freedom of Information Act (FOIA.) *See* 5 U.S.C. § 552(a)(4)(B); Reynolds's Complaint (Compl.), 1; Court of Appeals appendix (CA app.) 1a; app. 45a *infra*, and, since the appeal stemmed from a final judgment of the district court dismissing the complaint, Judgment; CA app. 11a, app. 75a, the

United States Court of Appeals for the Second Circuit had jurisdiction pursuant to 28 U.S.C. § 1291. Reynolds invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

For the relevant constitutional and statutory provisions, *see* app. BB.

STATEMENT

FOIA Requests and Administrative Appeals

By letter dated February 19, 2007 the petitioner made Freedom of Information Act (FOIA) requests pursuant to 5 U.S.C. § 552 to 93 United States (US) Attorneys' offices. Content-wise, there were three different submissions: one version went to the four US Attorneys in Florida; another went to the one in Massachusetts; and the third went to the other 88. Complaint (Compl.), Ex. A; Plaintiff's Court of Appeals Appendix (CA) app. 13a-21a; app. 7a-18a.[1]

The requests for information sought to determine the validity of indications concerning some extraordinarily uncomfortable topics. Reynolds stumbled across information while conducting research on an unrelated topic during 2005 and 2006 for a thesis he wrote in pursuit of a Masters' Degree in US history, *see* "FBI Agents on House Committee," *Congressional Quarterly Weekly Report*, March 3, 1973, at p. 426; "Human Guinea Pigs: Congress Considering Limits," *Congressional Quarterly Weekly Report*, March 10, 1973, at pp. 519-522. This information coupled with other readings and experiences over the past couple of decades led to the conclusion that he

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[1] There was no joint appendix in the Court of Appeals.

would not be the first one that some of the things described in the FOIA requests may have happened to, if indeed they had happened to him. The decision to make the requests to every United States (US) Attorney in the nation was not an easy one but, since some of the indicators occurred in many locales throughout the nation, the impression was there may have been widespread dissemination of negative information about Reynolds. After trying, there was an inability to approach the topics in the FOIA requests in any way, except head on; and there was a full understanding of being vulnerable to charges of being a crackpot. While the requests referred to deception, they did not specifically refer to a potentially extremely effective form of fakery: hypnosis, inasmuch as any analysis of visual, or acoustic recordings of somebody in such a state would determine the biometrics of the person in the recordings to be authentic, thereby lending credibility to the records.

Anyway, by about April 2008 there were approximately 57 replies from US Attorneys' Offices (USAO) that mostly said that the proper place to make the FOIA request was to the Executive Office for United States Attorneys (EOUSA). They also indicated that the respective USAO would forward the FOIA requests there. A few, however, responded differently. Compl., Ex. B. There was also a reply from the Office of the Inspector General (OIG) denying the request. Hearing nothing from the EOUSA, on or about the 22nd day of April, 2007, Reynolds faxed a copy of the requests to the EOUSA, Compl., Ex. A; CA app. 12a

-21a; app. 8a-22a, and received by letter dated June 11, 2007 a denial, which assigned the number 7-707 to the requests. *See* Compl., Ex. C; CA app. 22a; app. 23a-24a. By letter dated June 12, 2007, Compl., Ex's. C, D, and E; Defendant-Appellee Appendix (DA) 67-72; app. 25a, petitioner administratively appealed that denial to the DOJ Office of Information Privacy (OIP). After the OIP acknowledged receipt of that appeal on June 22, 2007, Compl., Ex. F; DA-74, Janice Galli McLeod, Associate Director (AD) of the OIP said by letter dated September 28, 2007, Compl., Ex. G; DA-75-76; app. 27a:

> After carefully considering your appeal, and as a result of discussions between EOUSA personnel and a member of my staff, I am remanding your request to EOUSA for a search for responsive records. If EOUSA locates responsive records through this search, it will send any and all releasable portions of them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by EOUSA.

She also stated that judicial review of her decision was an option pursuant to 5 U.S.C. § 552(a)(4)(B). *Id.*

By letter dated December 7, 2007, the EOUSA acknowledged receipt of the FOIA request from the OIP, assigned it number 07-4118, and said, among other things, that "search time is charged at a rate of $28 per hour after the first two hours which are free, and duplication fees are $0.10 per page after the first 100 pages which are free," and added a requirement to make a second FOIA request before it would provide the results of the initial two-hour 100-page free search. Compl., Ex. H; DA-78; App. 28a-29a. The ensuing appeal by

fax of this ruling on December 24, 2007, expressed confusion and frustration with the process. Compl., Ex. I; DA-79-80; App. 30a-31a. By letter dated both December 21, 2007 and January 8, 2008, the EOUSA sought "an advance payment of $2,568.80.00," Compl., Ex. J; app. 32a, but there was no affidavit vouching for the adequacy of the initial two hours of its search, which could potentially have satisfied the FOIA requests. By fax dated February 14, 2008, there was an appeal of the fee assessment to the OIP, stating that lack of funds precluded paying that amount of money. DA-84; app. 34a. Then, in a letter dated May 13, 2008, DA-88; app. 35a-36a, the EOUSA denied a fee waiver request, which there was no recollection of ever having made, for: (1) not being "in the public interest"; (2) not being "likely to contribute significantly to the public understanding of the operations or activities of the government"; (3) not contributing "to the understanding of a reasonably broad audience of persons interested in the subject"; and (4) because indigence was not a reason to grant a fee waiver. *Id.* By fax dated June 9, 2008, there was an appeal of this ruling to the OIP, believing the subject of the records sought self-evidently to meet the criteria for granting a fee waiver. DA-90; app. 37a. By letter dated October 24, 2008 Janice Galli McLeod of the OIP ruled the fee waiver denial to be justified, arguing by implication that the potential use of unwitting human subjects in possibly lethal medical research as a way for the legislature to execute bills of attainder satisfied neither the statutory nor regulatory criteria for granting the

waiver. Citing 5 U.S.C. § 552(a)(4)(A)(iii); and 28 C.F.R. § 16.11(k) (2008); *see* DA-92-93; app. 38a-39a.

After a very confusing year-and-a-half-long series of events that began on February 24, 2007 and included a request denial, a fee assessment, a fee-waiver denial and administrative appeals of each of them separately, the OIC AD, Janice Galli McLeod, by letter dated December 9, 2008, DA-95-97; app. 40a-44a, did two things: (1) she upheld again the fee-waiver denial, suggesting that another reason for denying the fee waiver was that the request was frivolous; and (2) in the penultimate paragraph, she denied the appeal, dated June 12, 2007, DA-72; app. 26a, of the initial April 22, 2007 FOIA request, thereby acknowledging the exhaustion of the administrative remedies regarding the EOUSA FOIA request denial. She also suggested on the one hand, that the EOUSA had conducted a two-hour search, while on the other, she stated there was no requirement to conduct a search in response to questions, DA-96-97; app. 43a-44a, apparently not noticing that the FOIA requests sought "any 302 reports" concerning the petitioner, DA-49; app. 22a, or "any records, to include visual and/or acoustic information and/or written materials/data, whether the product of fakery or not," DA-51, 54, 57; app. 12a, 16a, 21a, referring to the events described in the FOIA requests.[2]

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[2] The content of the footnotes regarding fakery mentioned sources concerning various types of deception but did not include the use of hypnosis to cause somebody to do or say who knows what without the person ever being aware of

Yet there was no mention of the results of the search and no records were forthcoming, despite her assertion in September 28, 2007 letter, DA-76; app. 27a, that the EOUSA would provide any records it found that were not subject to fees, which the first two hours and 100 pages were not. In this letter, Galli-McLeod essentially added an additional requirement beyond that of the statute governing FOIA requests: for Reynolds to make an additional request following the initial FOIA request denial and administrative appeal denial and, depending on the result of the second FOIA request, potentially a second administrative appeal of a second FOIA request denial.

Proceedings in the District Court

Reynolds filed this action under FOIA on January 15, 2009, seeking "judicial review to reverse Freedom of Information Act (FOIA) and fee waiver denials by the Executive Office for United States Attorneys (EOUSA) of the United States Department Justice (USDOJ), upheld on administrative appeal by the USDOJ Office of

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having done so: "Currently [May 5, 1955] there is a murder trial in [location redacted] in which the murderer has been judged to have been under hypnosis at the time of the crime. He has been retried, released and the hypnotist tried and convicted. The case is now under appeal." *See* "Hypnotism and Covert Operations," (4:28 P.M., February 14, 2011)
http://www.foia.cia.gov/docs/DOC_0000140404/DOC_0000140404.pdf
Assuming there has been progress in the techniques of hypnosis since 1955, it would appear to be an effective deception method.

Information and Privacy (OIP)." Compl., 1; DA-37; app., 45a. The complaint also requested that: (1)

> This court enjoin government agencies from withholding the requested records and order the production to the complainant (at no financial cost to the plaintiff) of any and all agency records withheld from him and assess against the United States litigation costs incurred by the complainant or, in the alternative, certify unambiguously that, after a diligent search, no responsive records can be found. Compl. 10-11; DA-46-47; app.56a;

and (2) any orders emanating from congress, the executive branch (military court, or commission), or the courts that prevented the release of records to him be lifted. *Id.* Reynolds made a declaration pursuant to 28 U.S.C. § 1746 in support of the complaint for the purpose, among others, of overcoming the frivolous claim made by Galli McLeod in the final administrative appeal denial. The Government responded on April 24, 2009 with a motion to dismiss the case for lack of subject matter jurisdiction, or in the alternative for summary judgment. Assistant US Attorney Brandon Cowart included a "Defendant's Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1, DA-21-27, and a § 1746 declaration from Dione Jackson Stearns, an "Attorney-Adviser with the Executive Office for United States Attorneys (EOUSA), United States Department of Justice," DA-28-35; app. 60a-67a, addressing in detail the fee-waiver denial, ridiculing the plaintiff for the unusual subject matter of the FOIA requests, but failing to address the fact that the plaintiff disputed the adequacy of the EOUSA search for records in the complaint. Compl., ¶¶ c., and 11.a. at pp. 9-10; DA-45-46; app. 54a-56a. The

appellant did not respond to the motion to dismiss because of his misunderstanding of the statement that Rule 56 does not permit opposing summary judgment with the allegations in the complaint. Since there was no evidence except what was in the complaint, Reynolds interpreted this statement to mean that there needed to be additional evidence and reproducing what was in the complaint in response to the motion would not do. Nevertheless, defendant did not address the adequacy of the search in the motion, so he failed to "establish the absence of a genuine issue"; therefore, Reynolds, while he would have been well advised to do so, "here was not required to come forward with suitable opposing affidavits." *Adickes v. SH Kress & Co.*, 398 US 144, 160 (1970). As the decision later states: "No defense to an insufficient showing is required." Citing J. Moore, Federal Practice ¶ 56.22 [2], p. 2825 (2d ed. 1966).

Despite accepting "as true all material facts alleged in the complaint," and committing to resolve "all ambiguities and ... inferences" in Reynolds' favor, United States District Judge (USDJ) Sydney H. Stein's *Memorandum Opinion and Order* (Order) at p. 3; DA-150; app. 71a, Judge Stein saw matters differently. His order dated July 7, 2009, Order; DA-148-153; app. 68a-74a, granted the defendant's motion to dismiss the complaint, holding the fee waiver denial to have been correct, stating that Reynolds' failure to respond to the defendant's motion was grounds for dismissal, and asserting that the claim was "frivolous and based on allegations that are implausible and appear to lack any connection to reality," citing

28 U S C § 1915(e)(2); *and Neitzke v. Williams*, 490 U.S. 319, 327 (1989). DA-152; app. 73a-74a. He did not address the that part of the complaint concerning the agency denial of FOIA/PA requests, or the adequacy of the search.

Reynolds submitted a motion to reconsider on July 15, 2009, pointing out the judge did not address the adequacy of the EOUSA's search for records in the opinion. *See* DA-155-160; app. 79a-88a. The memorandum reemphasized the failure by the EOUSA to (1) aver it had conducted an adequate search, (2) certify the results of any searches that may have occurred, including by the US Attorneys who may have done so independently of the EOUSA, or (3) release any responsive records it may have located. It also claimed to meet all four of the considerations informing the agency whether to grant a fee waiver pursuant to 28 C.F.R. § 16.11(k)(2) in the complaint, arguing most importantly that the release of records of a possible bill of attainder and legislative execution thereof were inherently in the public interest. He responded to the frivolous complaint ruling as well by reiterating that: "The Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against me. See the Declaration of James Reynolds (Reynolds Dec.) ¶ 3; Ex. Q." and "Kaoru is a name given to Japanese males," citing Gary D. Allinson, *The Columbia Guide to Modern Japanese History* (New York, 1999), at pp. 132-133.

Reynolds explicitly requested the lifting of any executive orders that might be preventing the release of responsive records as well. *See* Reynolds Dec. ¶ 3; Ex. Q. By order dated July 17,

2009 Judge Stein denied the motion, apparently not noticing the fact that Reynolds had addressed the inadequacy of the search in the complaint, Stein Order; DA-162-163; app. 76a-78a, and simultaneously seeming to assert both that Reynolds raised the adequacy of the search in the complaint, but that he also raised the issue for the first time in the motion to reconsider. *Id.* Remarks in a footnote appear contradictory:

> Even if the Court construed as new Reynolds' arguments on reconsideration and in support of his allegation that the Department of Justice's searches pursuant to his requests were inadequate (Mem. in Support of Mot. to Reconsider ¶ 3), the Court would decline to consider such contentions. *See Abrahamson*, 237 F. Supp. 2d at 510 (parties may not "advance new facts, issues or arguments" for the first time on a motion to reconsider). See Stein Order, n1 at p. 2; DA 163; app. 77a.

Proceedings in the US Court of Appeals

Reynolds timely appealed the district court ruling to the United States Court of Appeals for the Second Circuit. Adequacy of the agency search, the fee waiver denial, and frivolous comp 'aint were the issues raised in the appellate brief. Regarding the Adequacy of the search for records, the Plaintiff-Appellant essentially repeated earlier arguments that the defendant failed to provide the requisite affidavits concerning any agency searches for records that may have occurred when seeking summary judgment. *See* Appellant Brief at pp. 7-8; app. 97a-98a, citing *Dinsio v. Fed. Bureau of Investigation*, No. 05 Civ. 6159L, 2007 U.S. Dist. LEXIS 60269, at *3 (W.D.N.Y. Aug. 16, 2007); *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 838 (D.C.Cir.2001);

Smith v. Fed. Bureau of Investigation, 448 F. Supp. 2d 216, 220-21 (D.D.C.2006); *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *Hadden v. Bureau of Prisons* 2008 WL 5429823 (S.D.N.Y); *Key v. Hynes*, 205 AD 2d 779, 781; *Bellamy v. New York City Police Dept.* (1 Dept. 2000) 272 A.D. 2d 120, 123; and *DeFabritis v. McMahon* (3 Dept. 2003) 301 A.D. 2d 892.

Arguing against the district court ruling on the fee waiver denial, Reynolds asserted he met "all four of the considerations informing the agency whether to grant a fee waiver ... in the complaint." Moreover,

> [a]s a graduate student in US history, Reynolds has the ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities. Since "the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against" Reynolds. Declaration of James Reynolds (Reynolds Decl.) ¶ 3; Compl., Ex. Q , the FOIA requests sought any records that might indicate "members of Congress or their staffs" sought the help of US Attorneys with "legislative efforts to execute that or any other bill of attainder against" Reynolds. Ex. A, 3. Legislative execution of a bill of attainder would concern (1) the prohibition against bills of attainder, U.S. Const. art. I § 9, and (2) the provision vesting the power of the executive in the "President of the United States of America." U.S. Const. art. II § 1. Can there be a better reason to grant a fee waiver than to support an effort to let the American public know if significant portions of their Constitution have been effectively scrapped? *See Judicial Watch, Inc. v. Dep't of Justice*, 122 F.Supp.2d 5, 8-11 (D.D.C.2000). Appellant Brief at p. 8-9; app. 99a.

Challenging the lower court ruling that his complaint was frivolous, Reynolds repeated

previous assertions about the bill of attainder and that Kaoru was male Japanese name. Appellant Brief at p. 9. Additionally, however, he explained he had

> no intent to be sensational in either the FOIA requests or the complaint, and it was personally excruciating to address those matters. The photo referenced in the initial pleadings, Reynolds Decl., Ex B, was taken in April 1991, while Reynolds was on leave en route to his next duty station in Korea. There he was directed to attend the Communication Security (COMSEC) Custodian Course, and the concern is that, since Kaoru is a male name, this photo may have been part of an effort to get a hook in him for blackmail purposes to compromise him into providing unauthorized access to cryptographic key material. During that tour of duty, he gave a sworn statement to federal law enforcement authorities complaining about the intelligence activities of a foreign government directed against the US regarding something different. This statement may have apparently unwittingly thwarted any effort there may have been to compromise him. That he may have been targeted for retaliation in (1) secret judicial proceedings, possibly to include legislative ... courts, or (2) a lethal finding pursuant to 50 U.S.C. § 413b(a) for his statement is extraordinarily disturbing.[3] That when he was in the Army at Fort

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[3] Other examples of indications that seem fantastic [but] that are strong enough to cross a threshold I do not know how to define but made it in the past acceptable to inquire about include: (1) John Doe #1, who worked at the morgue and was seen at a local bar while on duty wearing his work clothes with what looked like stains from corpse matter in the summer of 1980 timeframe; (2) John Doe #2 owned a funeral home with hearses; (3) the indication for which previous FOIA request sought records was that I may have been drugged and photographed next to a cadaver, which was

> Campbell, KY in 199,7 [sic] there was a former crew member on Air Force One assigned to his section to an unauthorized slot made him curious, especially since former crew member had been in the same battalion Reynolds was in, during his 1991-1992 tour of duty in Korea. Appellant Brief at pp. 4-5; app. 92a-94a.

Reynolds concluded the brief by seeking the same relief sought in the complaint. Appellant Brief at p. 10; app. 100a-101a.

Assistant US Attorney Brandon Cowart submitted a brief on behalf of the Defendant-Appellee on June 10, 2010. After insulting Reynolds for the content of his FOIA requests, Cowart argued that Judge Stein was correct in dismissing the Complaint because: the fee waiver denial by the EOUSA complied with standard agency practice; the Complaint was frivolous, owing to the content of the FOIA requests and, presumably, Reynolds' declaration pursuant to 28 U.S.C. § 1746; and, the motion to reconsider offered new arguments that were not included in the Complaint. Appellee Brief, at p. 2; app. 103a. Cowart refused to recognize that ¶¶ 10.c. and 11.a. in the Complaint challenged the adequacy

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transported from the morgue to who knows what location by John Does #1 in one of John Doe #2's hearses (so as to have an explanation for transporting a dead body) either as a prank or for potentially getting a hook in me for blackmail purposes by saying there is evidence of necrophilia; and (4) law enforcement authorities may have managed to get a cadaver dog(s) to the location and used the reaction of the dog(s) to justify conducting a homicide investigation and/or to obtain court orders. While these individual indications might seem fantastic, the larger threshold is whether the "big lie" technique was employed against me. If so, anything goes.

of the EOUSA's search for records, arguing, instead, that Reynolds "raised them for the first time in the motion for reconsideration." Appellee Brief at p. 9; app. 120a.

A three-judge panel of the US Court of Appeals for the Second Circuit with Circuit Judges RALPH K. WINTER, JOSÉ CABRANES, AND DENNY CHIN presiding affirmed the lower court ruling in a Summary Order filed on August 26, 2010. The appeals court held, after reviewing the EOUSA's decision *de novo*, that Reynolds satisfied none of the criteria used by the agency to determine eligibility for a fee waiver. Summary Order at pp. 2-3; app. 4a-5a. It also determined that, despite Janice Galli McLeod's "letter dated September 28, 2007, Compl. ex. G; DA-76, DA-121," in which she wrote:

> After carefully considering your appeal, and as a result of discussions between EOUSA personnel and a member of my staff, I am remanding your request to EOUSA for a search for responsive records. If EOUSA locates responsive records through this search, it will send any and all releasable portions of them to you directly.

Reynolds needed to exhaust his administrative remedies twice concerning the FOIA request denial before being eligible to sue in federal court, Summary Order at p. 3; app. 5a, even though neither a declaration certifying the search nor responsive records were forthcoming. The appellate panel further stated that those reasons were sufficient to grant summary judgment, so there was no need to address whether the Complaint was frivolous or not; nor had the district court abused its discretion in denying the Plaintiff's

motion to reconsider. Summary Order at p. 3; app. 6a.

Reynolds timely filed a Petition for a Panel Rehearing and/or for a Rehearing *En Banc* to the United States Court of Appeals for the Second Circuit on October 9, 2010 (Reynolds' *en banc* Pet.); app. 123a-138a. In the Petition he asserted that the Summary Order conflicted "with the equal protection component of the Fifth Amendment's due process clause, ... decisions of the United States (US) Supreme Court, ... decisions of the United States Court of Appeals for the Second Circuit, and ... with authoritative decisions of the United States Courts of Appeals for the District of Columbia and Tenth Circuits," citing U.S. Const. Amend. V; *Adarand Constructors, Inc. v. Pena, Secretary of Transportation, et al* - 515 U.S. 200 (1995); *Buckley v. Valeo*, 424 U. S. 1 (1976); *Miller v. Wolpoff & Abramson, L.L.P* 321 F3d 292, 300 (2nd Cir. 2003); *Patterson v. County of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004); *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005), 350, 355; and *Shrader v.CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995); *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 61, 66 (D.C. Cir. 1990); and *Nichols v. U.S.* C.A. 10 (N.M.) 1986, 796 F.2d 361, respectively.

He argued "To the extent any records that the agency found in its search were not included in the *de novo* review by this Court" in ruling on the public interest part of the fee waiver denial, "Compl. Ex. J, Ex. P; DA-82, DA-96, *id.*"; *see* Reynolds' *en banc* Pet. at p. 8; app.132a-133a, "the summary order was premature insofar as it

was based on an incomplete agency record." The point was that the release of any records discovered during an agency search may have been self-evidently in the public interest. He further contended that he "exhausted the requisite administrative remedies with respect to the EOUSA and OIG FOIA request denials before suing," citing *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 61, (D.C. Cir. 1990). *See* Reynolds' *en banc* Pet. at p. 8; app.133a. That "the defendant offered nothing factual to counter that when moving to dismiss the case," he asserted, citing *Nichols v. U.S.* C.A. 10 (N.M.) 1986, 796 F.2d 361, meant "he was entitled to the relief sought in the complaint, at least as it pertained to certification of the conduct of a search." *Id.* After all, Reynolds continued, "as this Court has ruled, 'A case should not be dismissed unless the court is satisfied that the complaint cannot state any set of facts that would entitle the plaintiff to relief.'" Citing *Miller v. Wolpoff & Abramson, L.L.P* 321 F3d 292, 300 (2nd Cir. 2003); *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005), 350, 355; and *Patterson v. County of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004). Reynolds' *en banc* Pet. at p. 9; app. 133a.

The reason the appeals court found "no basis in the record ... to evaluate the FOIA search, [Summary] Order 3," Reynolds went on to state, was "the failure by the EOUSA and OIP to fulfill the requirement to have either the person searching for records or 'an agency employee responsible for supervising a FOIA search' to submit an affidavit, *Radcliffe v. I.R.S.*, S.D.N.Y., 2008, 536

F.Supp. 2d 423, demonstrating 'beyond material doubt that its search was reasonably calculated to uncover all relevant documents.' *Dinsio v. Fed. Bureau of Investigation*, No. 05 Civ. 6159L, 2007 U.S. Dist. LEXIS 60269, at *3 (W.D.N.Y. Aug. 16, 2007) (quoting *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 838 (D.C.Cir.2001)." Reynolds' *en banc* Pet. at p. 11; app. 137a-138a.

The Petitioner concluded by asking the appeals court to, among other things, "reverse the panel's summary order and grant the appellant all the relief sought in the complaint, the motion to reconsider, and the appellant's brief." Reynolds' *en banc* Pet. at p. 12; app. 138a.

By Order filed on November 19, 2010 the US Court of Appeals for the Second Circuit denied Reynolds' Petition. *See* app. 1a.

REASONS FOR GRANTING THE PETITION

Importance of the question

In the larger scheme of things, all other things being equal, denying Reynolds' FOIA request probably would not be an important enough matter for this Court to consider on its merits. However, what the requested records may reveal concerning the separation of powers in general, and bills of attainder and legislative execution in particular might make it worth the while of this Court to examine this case more closely. For what it has the potential to reveal is a system for denying liberty without due process of law, U.S. Const. Amend V, centered in the legislative branch whose arguably pernicious effects are atomized and manifest themselves merely as instances of individual injustice, thereby making

scrutiny by this Court unlikely, even though such scrutiny may be sorely needed.

Exhaustion of Administrative Remedies and Adequacy of the Agency Search for Records

The Decision of the Appeals Court pertaining to exhausting administrative remedies and the sufficiency of any searches for records conflicts with a US Supreme Court decision, as well as those of other US Circuit Courts of Appeal. In this case, the panel of the US Court of Appeals for the Second Circuit ruled that Reynolds had to submit another FOIA request, which narrowed the search "to the first two hours of searching and the first 100 pages" in order to exhaust administrative remedies prior to suing in federal court. *See* Summary Order at p. 3. However, by letter dated September 28, 2007, Janice Galli McLeod, Associate Director (AD) of the Office of Information Privacy (OIP), wrote in response Reynolds' June 12, 2007appeal of the FOIA request denial by the EOUSA and OIG: "I am remanding your request to EOUSA for a search for responsive records. If EOUSA locates responsive records through this search, it will send any and all releasable portions of them to you directly." Compl., Ex. G; DA-76; app. 27a. Therefore, by not providing any responsive records, as she committed to do, despite the passage of approximately another year and a half, *see* Compl. Ex. P; DA-95-DA97; app. 40a-44a, "a presumption arises that the agency is motivated by a desire to shield" any records it may have found during its search. *Department of Justice v. Tax Analysts*, 492 US 136, 157 (1989), quoting *Kissinger v. Reporters Committee for Freedom of*

Press, 445 U. S. 136 (1980) at p. 166. Moreover, to require Reynolds to submit a second request and, potentially, a second administrative appeal as well denies him equal protection of the law. U.S. Const. Amend. V; *Adarand Constructors, Inc. v. Pena, Secretary of Transportation, et al* - 515 U.S. 200 (1995); *Buckley v. Valeo*, 424 U. S. 1 (1976).

Since he exhausted the requisite administrative remedies with respect to the EOUSA and OIG FOIA request denials before suing, *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 61, (D.C. Cir. 1990), and the defendant offered nothing factual to counter that when moving to dismiss the case, *Nichols v. U.S.* C.A. 10 (N.M., 1986) 796 F.2d 361, Reynolds was entitled to the relief sought in the complaint, at least as it pertained to certification of the conduct of a search. Thus, the Summary Order affirming the District Court's ruling conflicts with the decisions of other Circuit Courts of Appeal.

This Court has held in the past that "Summary judgment would be improper if the adequacy of the agency's search were materially disputed on the record," as was the case here, "for such a dispute would indicate that material facts were still in doubt." *Miller v. United States Dept. of State*, 779 F. 2d 1378, 1383, C.A. 8 (1985.)

It is the government's burden "to demonstrate that it has thoroughly searched for the requested documents where they might reasonably be found. If the agency has not made this showing," as is the situation in this case, "then the requester can avert a motion for summary judgment" *Id.* Again, Reynolds exhausted the requisite

administrative remedies with respect to the EOUSA and OIG FOIA request denials before suing, *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 61, (D.C. Cir. 1990), and the defendant offered nothing factual to counter that when moving to dismiss the case, *Nichols v. U.S.* C.A. 10 (N.M.) 1986, 796 F.2d 361. Therefore, he was entitled to the relief sought in the complaint. As the lower court has ruled elsewhere, "A case should not be dismissed unless the court is satisfied that the complaint cannot state any set of facts that would entitle the plaintiff to relief." *Miller v. Wolpoff & Abramson, L.L.P* 321 F3d 292, 300 (2nd Cir. 2003); *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005), 350, 355; *Patterson v. County of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004). Here the facts concern the inadequacy of the search within the two-hour, 100-page limit for a free search by the EOUSA in response to Reynolds' FOIA request.

Fee Waiver Denial

While indigence alone, as Reynolds claimed in his administrative appeal, is insufficient grounds for granting a fee waiver, it does not disqualify somebody from receiving one, either, especially if the content of any records showed it was in the public interest to release them. Ms. Galli McLeod was indeed conscientious in apparently being concerned about my privacy and the potential impact on me of making public any records that might validate the indications that some of the things described in the FOIA requests occurred to me. *National Archives and Records Admin. v. Favish*, 541 US 157, 174-175 (2004.) However, a lot

of time and agonizing thought went into deciding whether to make those FOIA requests to 93 US Attorneys and dealing with the content contained therein. For there are fewer things, if any, that are less pleasant to do. The assumption prior to submitting them, based on a decade or so of odd, unexplained, negative reactions from people I know, however, was that maximum dissemination likely had already occurred, and whatever damage that might occur already happened; only I was kept in the dark. One possibility was that dissemination took place under the cover of legislative immunity pursuant to rulings such as *Doe v. McMillan*, 412 U.S. 306 (1973). The ideal outcome would have been that records would reveal the indications that some of the things described in the FOIA requests had occurred to me were invalid. Nobody ought to experience such things.

Since the claim is that "the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against" Reynolds, Declaration of James Reynolds (Reynolds Decl.) ¶ 3; Compl., Ex. Q; app. 57a-59a, the FOIA requests sought any records that might indicate "members of Congress or their staffs" sought the help of US Attorneys with "legislative efforts to execute that or any other bill of attainder against" Reynolds. Ex. A, 3. Legislative execution of a bill of attainder would concern (1) the prohibition against bills of attainder, U.S. Const. art. I § 9, and (2) the provision vesting the power of the executive in the "President of the United States of America." U.S. Const. art. II § 1. The US Justice

Department has detailed personnel to Congress for at least six decades:

> A report issued by the House Appropriations Committee published in the *Congressional Record* February 19, [1973], revealed that 40 FBI agents were on the payroll of the committee in the last six months of 1972. The agents conducted investigations for the committee into the financial status of U.S. government agencies and personnel and also performed special case work for the committee.
>
> It marked the 30th consecutive year in which the Appropriations Committee, which handles the annual budget request for the FBI, had the FBI agents on the payroll as investigators. The FBI has usually received as much money as it has sought from the Appropriations Committee for its operations. In fiscal 1973, the FBI received its full request of $351,675,000. *(1972 Almanac p. 301)*
>
> Spokesmen for the Appropriations Committee and for the FBI expressed no intention of discontinuing their relationship following the first public disclosure of the arrangement in a Congressional Quarterly article of April 23, 1971. *(1971 Weekly Report p. 537) See* "FBI Agents on House Committee," *Congressional Quarterly Weekly Report*, March 3, 1973 at p. 426.

Can there be a better reason to grant a fee waiver than to support an effort to let the American public know it significant portions of their Constitution have been effectively scrapped, claims of indigence notwithstanding? *See Judicial Watch, Inc. v. Dep't of Justice*, 122 F.Supp.2d 5, 8-11 (D.D.C.2000).

Frivolous Complaint

While the District Court held the Complaint to be frivolous, the Appeals Court affirmed the decision on other grounds, without evaluating that matter. Reynolds submitted a declaration

pursuant to 28 U.S.C. § 1746, asserting both that Omnibus Budget Reconciliation Act was a bill of attainder against him, and that Kaoru is a name given to Japanese males, describing a potentially very embarrassing occurrence in Hawaii in April 1991. Thus, there was sufficient evidence in the Complaint and accompanying declaration - which, after all, was made in a case where somebody with prosecutorial discretion was the defendant - to keep Cowart's motion from "establishing the absence of a genuine issue"; therefore, "summary judgment" ought to have been "denied *even if no opposing evidentiary matter [was] presented.*" *See Adickes v. SH Kress & Co.*, 398 US 144, 160-161 (1970). The fact is that, "the burden remains on the government to demonstrate that it has thoroughly searched for the requested documents where they might reasonably be found. If the agency has not made this showing, then the requester can avert a motion for summary judgment," *Miller v. United States Dept. of State*, 779 F. 2d 1378, 1383, C.A. 8 (1985); therefore, "in view of the conflict of the decision below with past decisions of this Court, the Court may wish to consider summary reversal." Eugene Gressman, et al., ed., *Supreme Court Practice, 9th Ed.*, (Arlington, VA, 2007) at p. 356.

CONCLUSION

Wherefore, the petitioner respectfully requests that the Court grant the petition, as well as such other and further relief as may be just and proper.
RESPECTFULLY SUBMITTED,

James J. Reynolds
Pro se
18 Lake Ave, 3rd Floor
Yonkers, NY 10703
(347) 712-1976
February 17, 2011

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Appendix A: APPEALS COURT REHEARING EN BANC DENIAL AND SUMMARY ORDER

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York on the 19th day of November, two thousand and ten.

James J. Reynolds

Plaintiff-Appellant,

v.

The Attorney General of the United States of America,

Defendant-Appellee.

SEAL: UNITED STATES COURT OF APPEALS SECOND CIRCUIT FILED NOV 19 2010 CATHERINE O'HAGAN WOLFE, CLERK ORDER

DOCKET NUMBER 09-3675-cv

James J. Reynolds filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

For the Court:

Catherine O' Hagan Wolfe. Clerk SEAL: UNITED STATES COURT OF APPEALS SECOND CIRCUIT "s/ Catherine O' Hagan Wolfe"

Frank Perez. Deputy Clerk

09-3675-cv Reynolds v. Holder

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rules of Appellate Procedure 32.1 and this court's local rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 26th day of August, two thousand and ten.

PRESENT: RALPH K. WINTER, JOSÉ CABRANES, AND DENNY CHIN,

Circuit Judges,

SEAL: UNITED STATES COURT OF APPEALS SECOND CIRCUIT FILED AUG 26 2010 Catherine O'Hagan Wolfe, Clerk

James J. Reynolds,

Plaintiff-Appellant,

v. No 09-3675-cv

SUMMARY ORDER

The Attorney General of the United States of America

Defendant-Appellee.

COUNSEL FOR PLAINTIFF-APPELLANT: JAMES J. REYNOLDS, *pro se*, Bronx, New York .

COUNSEL FOR DEFENDANT-APPELLEE: Brandon H. Cowart and Sarah S Normand, Assistant United States Attorneys (Preet Bharara, United States

Attorney for the Southern District of New York), New York, NY.

Appeal from a judgment and order of the United States District Court for the Southern District of New York (Sidney H. Stein, *Judge*).

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment and order of the District Court are AFFIRMED.

Plaintiff-Appellant James J. Reynolds ("plaintiff" or "Reynolds"), proceeding *pro se* appeals the District Court's order granting summary judgment in favor of the government on Reynolds's claims pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the District Court's post-judgment order denying reconsideration of the decision granting summary judgment. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

We review an order granting summary judgment *de novo* and focus on whether the district court properly concluded that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. See *Miller v. Wolpoff & Abramson*, L.L.P., 321 F.3d 292,300 (2d Cir. 2003); see *also Nat'l Council of la Raza v. Dep't of Justice*,411 F.3d 350, 355 (2d Cir. 2005) (FOIA case).

In FOIA actions, both the District Court and this Court "must review an agency's determination on a fee waiver issue *de novo*, but only with reference to the record before the agency." *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814 (2d Cir. 1994).

FOIA authorizes each agency to charge a "reasonable" amount for certain types of costs, see 5 U.S.C. § 552(a) (4)(A), but the agency must furnish documents "without any charge or at reduced rates if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester," 5 U.S.C. § 552(a)(A)(4)(iii). To establish a right to a fee waiver under the public interest provision, the requester bears the burden of establishing that the disclosure of information is in the public interest and is not primarily in his commercial interest. *Carney*, 19 F.3d at 814 (citing *Nat'l Treasury Employees Union v. Griffin* 811 F.2d 644, 648 (D.C. Cir.1987)).

Here, the District Court correctly upheld the denial of Reynolds's fee waiver request by the U.S. Department of Justice ("DOJ"). Reynolds sought a fee waiver in his FOIA request, but his request did not specify any grounds for the agency to grant the waiver. Furthermore" in his administrative appeal requests, Reynolds argued only that he should be granted the waiver because he could not afford the fees, and the record shows that he did not mention his academic status or interest in publishing a scholarly article until he filed his complaint in the District Court. *See Ely v. U.S. Postal Serv.*, 753 F.2d 163, 165 (D.C. Cir. 1985) (indigence alone does not satisfy burden for FOIA fee waiver); *Larson v. CIA*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (requester's failure to provide information indicating an ability

to disseminate the requested information was sufficient basis for denying fee waiver). Accordingly, the DOJ properly denied Reynolds's fee waiver request and, thus, the District Court correctly granted summary judgment in favor of the government on this issue.

Although Reynolds properly exhausted his challenge to the denial of his fee waiver request, he has not exhausted his underlying FOIA request in light of our conclusion that the agency properly denied his fee waiver request. *See Oglesby v. U.S. Dep't of Army*, 92A F.2d 57, (D.C. Cir. 1990) ("Exhaustion does not occur until the requited fees are paid or an appeal is taken from the refusal to waive fees."). The record shows, and Reynolds does not deny, that he has not yet paid the required fees to narrowed his request to the first two-hours of searching and the first 100 pages of records, which the DOJ's regulations would allow him to receive for free. *See* 28 C.F.R. § 16.1 1 (d)(3). Similarly, Reynolds's argument about the adequacy of the search is also unexhausted because there is no basis in the record upon which any court could evaluate the search at this time. *Oglesby*, 920 F.2d at 61 ("Exhaustion of administrative remedies is generally required before filing suit in federal court so chat the agency has an opportunity to exercise its discretion and expertise on the matter and to make a factual record to support its decision.").

Because we conclude that the District Court properly granted summary judgment for the reasons explained above, we need not teach the District Court's alternative conclusion that dismissal

of the complaint was warranted on the ground that Reynolds's FOIA request was factually frivolous.

Finally, we review a district court decision regarding Rule 59(e) and Rule 60(b) reconsideration motions for "abuse of discretion." *See Transaero, Inc. v. La Fuerza Area Boliviana*,162 F.3d 724.729 (2d Cir. 1998) (Rule 60(b)); *Empresa Cubana del Tabaco v. Culbro Corp.*,541 F.3d 476,478 (2d Cir. 2008) (Rule 59(e). A review of the record reveals that the District Court did not abuse its discretion in denying Reynolds's reconsideration motion, as the motion largely reiterated the allegations in the complaint and did not demonstrate that the District Court had overlooked any facts or controlling authority that might alter its decision granting summary judgment.

We have considered plaintiff's remaining arguments and find them to be without merit. Accordingly, we AFFIRM the judgment and order of the District Court.

CONCLUSION

For the foregoing reasons, the judgrment of the District Court is AFFIRMED.

FORTHE COURT,

Catherine O'Hagan Wolfe, Clerk SEAL: UNITED STATES COURT OF APPEALS SECOND CIRCUIT "s/Catherine O'Hagan Wolfe"

Appeal from a judgment and order of the United States Court for the Southern District of New York (Sidney H. Stein, Judge)

UPON DUE CONSIDERATION WHEROF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the

judgment and order of the district court is AFFIRMED.

Appendix B: FOIA Request to the four US Attorney's in Florida

To Whom It May Concern:

This is a request under the Privacy Act/Freedom of Information Act, 5 U.S.C. § 552. My name is James Reynolds, my SSAN is 104-52-9072, and I was an Army officer from 1985 until 1998, leaving as a major after having been stationed at Fort Benning, GA, Fort Sill, OK, Fort Gordon, OK Camp Coiner Republic of Korea (ROK), Fort Hood, TX, Camp Stanley, ROK and Fort Campbell, KY. Over approximately the past two decades, I have been in just about every state in the Union, so it would appear to me as a non-lawyer that just about any US Attorney in the country who sought it could have had jurisdiction over me in some way.

The Medical Platoon Leader in 1st Battalion, 58th Infantry, Fort Benning, GA, the unit I was assigned to from 1986 to 1988, was a microbiologist studying the aids virus and went on to get his Ph.D. in microbiology at the medical college of Georgia in Augusta, conducting advanced research on the aids virus. There are strong indicators I was a human subject in this research. Moreover, there are indicators my image was transferred into simulations (COFT, SIMNET, and Flight Simulators) to depict a virtual-reality version of me as a promiscuous homosexual and, that there were efforts to make the version of me that exists in physical reality jive with the phony version of me by drugging me and violating me with a foreign object or, maybe even a real homosexual. Indicators are the eventual objective may have

been: (1) to infect me with the aids virus; (2) to disseminate the visual fakery depicting the virtual-reality version of me as a promiscuous homosexual to make it appear that my behavior was bound to result in my being infected with the aids virus, anyway; (3) to subvert my authority with my subordinates; (4) to use the fakery to show probable cause in support of efforts to obtain court orders; and (5) to defame me to visiting international officers, while I worked in the Protocol Office. Has this office ever received any information about me and, if so, has anybody ever begun an investigation of me based on any such material? The objective here is to see how widely derogatory information about me may have been distributed and what effects such circulation may have had.

There are also indications whose validity I seek to ascertain that news media organizations received pentagon permission to be embedded undercover in the units in which I served. Did any news media organizations/reporters/personnel/employees ever make inquiries with this office regarding me, regardless of whoever the US Attorney may have been? If so, did these news media representatives ever pass on information they suggest they gathered about me as a result of being embedded and, if so, did they do so with the expectation that any such information would be used to trigger an investigation of me by this office?

I contend that the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder

against me because it specifically targeted people who were: (1) born in 1962, (2) had attained the age of 19 when the law took effect, (3) received benefits while in high school before graduating in 1980 or earlier, (4) took time off before beginning postsecondary school in September 1981 or later during the 1981 academic year, (5) received benefits between September 1981 and August 1982, and (6) had them terminated completely in August 1982 instead of having them phased out because of the Omnibus Budget Reconciliation Act of 1981. I fit into this very narrowly defined category. Did any members of Congress or their staffs – either committee or member staffers – ask this US Attorney's office to assist the Congress in legislative efforts to execute that or any other bill of attainder against me and, if so, did anybody in this office take any actions in response? What was the result of any such endeavors, and did they produce information, whether fakery or not, in the process?[4] Did anybody in the above-mentioned category seek

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[4] See, for instance, Dino Brugioni, *Photo Fakery: The History and Techniques of Photographic Deception and Manipulation* (Dulles, VA: Brassey's, 1999). Brugioni is a founder of the Central Intelligence Agency's (CIA) National Photographic Interpretation Center; Victor Ostrovsky with Claire Hoy, *By Way of Deception* (New York: St. Martin's Press, 1990) Also, see Antonio J. Mendez with Malcolm McConnell, *The Master of Disguise: My Secret Life in the CIA* (New York: William Morrow and Co., Inc., 1999); The definition of deception in Federal Standard 1037C, "Telecommunications: Glossary of Telecommunications Terms." http://www.its.bldrdoc.gov/pub/fs-1037, as of 10:25 A.M. 25 March 2006 is useful, too.

assistance retaliating against me because, on or about December 6, 1991, I gave a sworn statement to the military police at Yongsan Army garrison in Seoul, ROK – where the headquarters for the United Nations Command and United States Forces Korea is – complaining about a foreign government's espionage activities? Did this US Attorney's office initiate an investigation of me as a result? Were there any other inquiries about me, say from officials of the city and state of New York, or anyplace else? During summers of 1986, 1987, 1988, 1989, or 1990, I often went to Panama City Beach, and, occasionally, Sandestin. Does your office have any evidence I was: (1) given a derby dose without out the whipping and rubbing of salt in the wounds; (2) drugged and photographed in compromising positions; (3) drugged to make me test positive on a urinalysis; or (4) used as an unwitting human subject in AIDS research?[5]

During a holiday that took me from Georgia to New York City to Tampa to Naples to Fort Lauderdale and to Key West during late-December 1989 and early-January 1990, the person I was vacationing with discussed possibly having to consult a lawyer regarding our vacation. This seemed to come completely out of the blue and only seems that it might make sense in light of what has happened to me over the past decade

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[5] For the definition of derby dose see, for example, Trevor Burnard, *Mastery, Tyranny, and Desire: Thomas Thistlewood and His Slaves in the Anglo-Jamaican World* (Chapel Hill, University of North Carolina Press, 2004), 104, 149-150, 260-261.

or so. She told me her brother had been arrested for illegal drugs (by federal authorities I believe, if my memory is correct). Was she helping to do some of the things mentioned in the previous paragraph as part of her brother's cooperation agreement?

I would request the most thorough search possible. Should a search of automated indices using my name uncover nothing, please check using the following aliases: J.R., Jimbo, Jimmy, Jim, D2, Chivas, Jimbone, T-bone, or any aliases with references to the Bronx. Moreover, I request any records, to include visual and/or acoustic information and/or written material/data, whether the product of fakery or not.

I am a citizen of the United States and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than $5,000. I request a fee waiver in the public interest.

Sincerely yours,

"s/James Reynolds"

Appendix C: FOIA Request to the US Attorney in Massachusetts

To Whom It May Concern:

This is a request under the Privacy Act/Freedom of Information Act, 5 U.S.C. § 552. My name is James Reynolds, my SSAN is 104-52-9072, and I was an Army officer from 1985 until 1998, leaving as a major after having been stationed at Fort Benning, GA, Fort Sill, OK, Fort Gordon, OK Camp Coiner Republic of Korea (ROK), Fort Hood, TX, Camp Stanley, ROK and Fort Campbell, KY. Over approximately the past two decades, I have been in just about every state in the Union, so it would appear to me as a non-lawyer that just about any US Attorney in the country who sought it could have had jurisdiction over me in some way.

The Medical Platoon Leader in 1st Battalion, 58th Infantry, Fort Benning, GA, the unit I was assigned to from 1986 to 1988, was a microbiologist studying the aids virus and went on to get his Ph.D. in microbiology at the medical college of Georgia in Augusta, conducting advanced research on the aids virus. There are strong indicators I was a human subject in this research. Moreover, there are indicators my image was transferred into simulations (COFT, SIMNET, and Flight Simulators) to depict a virtual-reality version of me as a promiscuous homosexual and, that there were efforts to make the version of me that exists in physical reality jive with the phony version of me by drugging me and violating me with a foreign object or, maybe even a real homosexual. Indicators are the eventual objective may have

been: (1) to infect me with the aids virus; (2) to disseminate the visual fakery depicting the virtual-reality version of me as a promiscuous homosexual to make it appear that my behavior was bound to result in my being infected with the aids virus, anyway; (3) to subvert my authority with my subordinates; (4) to use the fakery to show probable cause in support of efforts to obtain court orders; and (5) to defame me to visiting international officers, while I worked in the Protocol Office. Has this office ever received any information about me and, it so, has anybody ever begun an investigation of me based on any such material? The objective here is to see how widely derogatory information about me may have been distributed and what effects such circulation may have had.

There are also indications whose validity I seek to ascertain that news media organizations received pentagon permission to be embedded undercover in the units in which I served. Did any news media organizations/reporters/personnel/employees ever make inquiries with this office regarding me, regardless of whoever the US Attorney may have been? If so, did these news media representatives ever pass on information they suggest they gathered about me as a result of being embedded and, if so, did they do so with the expectation that any such information would be used to trigger an investigation of me by this office?

I contend that the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder

against me because it specifically targeted people who were: (1) born in 1962, (2) had attained the age of 19 when the law took effect, (3) received benefits while in high school before graduating in 1980 or earlier, (4) took time off before beginning postsecondary school in September 1981 or later during the 1981 academic year, (5) received benefits between September 1981 and August 1982, and (6) had them terminated completely in August 1982 instead of having them phased out because of the Omnibus Budget Reconciliation Act of 1981. I fit into this very narrowly defined category. Did any members of Congress or their staffs – either committee or member staffers – ask this US Attorney's office to assist the Congress in legislative efforts to execute that or any other bill of attainder against me and, if so, did anybody in this office take any actions in response? What was the result of any such endeavors, and did they produce information, whether fakery or not, in the process?[6] Did anybody in the above-mentioned category seek assistance retaliating against me because, on or

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[6] See, for instance, Dino Brugioni, *Photo Fakery: The History and Techniques of Photographic Deception and Manipulation* (Dulles, VA: Brassey's, 1999). Brugioni is a founder of the Central Intelligence Agency's (CIA) National Photographic Interpretation Center; Victor Ostrovsky with Claire Hoy, *By Way of Deception* (New York: St. Martin's Press, 1990) Also, see Antonio J. Mendez with Malcolm McConnell, *The Master of Disguise: My Secret Life in the CIA* (New York: William Morrow and Co., Inc., 1999); The definition of deception in Federal Standard 1037C, "Telecommunications: Glossary of Telecommunications Terms," http://www.its.bldrdoc.gov/pub/fs-1037, as of 10:25 A.M. 25 March 2006 is useful, too.

about December 6, 1991, I gave a sworn statement to the military police at Yongsan Army garrison in Seoul, ROK – where the headquarters for the United Nations Command and United States Forces Korea is – complaining about a foreign government's espionage activities? Did this US Attorney's office initiate an investigation of me as a result? Were there any other inquiries about me, say from officials of the city and state of New York, or anyplace else?

I would request the most thorough search possible. Should a search of automated indices using my name uncover nothing, please check using the following aliases: J.R., Jimbo, Jimmy, Jim, D2, Chivas, Jimbone, T-bone, or any aliases with references to the Bronx. Moreover, I request any records, to include visual and/or acoustic information and/or written material/data, whether the product of fakery or not.

I am a citizen of the United States and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than $5,000. I request a fee waiver in the public interest.

Sincerely yours,

"s/James Reynolds"

P.S.
In June 1990, I attended a convention of my college fraternity, Delta Kappa Epsilon, (DEKE) in Boston, while on PCS leave from Fort Benning. Nelson Mandela was in Boston at the time, according to news accounts. I went to Cape Cod afterwards, alone because nobody else wanted to go. On June 24, my 28th birthday, a young lady seated within earshot of me at the beach in Hyannis, whom I did not know, was speaking loudly about 28th birthdays – occurrences like this have been commonplace for as long as I can remember and suggest I am under continuous surveillance. I flew back to then Hartsfield International Airport in Atlanta to pick up my car – where I parked it before going to Boston – to drive back to my apartment in Columbus, GA. While on I-185 southbound heading home, I noticed I-185 North was crowded with what appeared to be convoys of people in cars and buses. Then, I heard on the radio Nelson Mandela was in Atlanta and concluded that was why I-185 northbound was so busy. I also remember thinking to myself jokingly that Nelson Mandela must be following me because I had been in Boston when he was and was briefly in Atlanta picking up my car while he was, too. Is there any derogatory information saying that I was stalking Nelson Mandela? If so, it is a lie. Moreover, if that report was ever offered in a legal proceeding, the attorney offering it likely suborned perjury and, if anybody testified that I had stalked Nelson Mandela, that person committed perjury.

Appendix D: FOIA Request to all US Attorneys except those in Massachusetts and Florida.

To Whom It May Concern:

This is a request under the Privacy Act/Freedom of Information Act, 5 U.S.C. § 552. My name is James Reynolds, my SSAN is 104-52-9072, and I was an Army officer from 1985 until 1998, leaving as a major after having been stationed at Fort Benning, GA, Fort Sill, OK, Fort Gordon, OK Camp Coiner Republic of Korea (ROK), Fort Hood, TX, Camp Stanley, ROK and Fort Campbell, KY. Over approximately the past two decades, I have been in just about every state in the Union, so it would appear to me as a non-lawyer that just about any US Attorney in the country who sought it could have had jurisdiction over me in some way.

The Medical Platoon Leader in 1st Battalion, 58th Infantry, Fort Benning, GA, the unit I was assigned to from 1986 to 1988, was a microbiologist studying the aids virus and went on to get his Ph.D. in microbiology at the medical college of Georgia in Augusta, conducting advanced research on the aids virus. There are strong indicators I was a human subject in this research. Moreover, there are indicators my image was transferred into simulations (COFT, SIMNET, and Flight Simulators) to depict a virtual-reality version of me as a promiscuous homosexual and, that there were efforts to make the version of me that exists in physical reality jive with the phony version of me by drugging me and violating me with a foreign object or, maybe even a real homosexual. Indicators are the eventual objective may have

been: (1) to infect me with the aids virus; (2) to disseminate the visual fakery depicting the virtual-reality version of me as a promiscuous homosexual to make it appear that my behavior was bound to result in my being infected with the aids virus, anyway; (3) to subvert my authority with my subordinates; (4) to use the fakery to show probable cause in support of efforts to obtain court orders; and (5) to defame me to visiting international officers, while I worked in the Protocol Office. Has this office ever received any information about me and, if so, has anybody ever begun an investigation of me based on any such material? The objective here is to see how widely derogatory information about me may have been distributed and what effects such circulation may have had.

There are also indications whose validity I seek to ascertain that news media organizations received pentagon permission to be embedded undercover in the units in which I served. Did any news media organizations/reporters/personnel/employees ever make inquiries with this office regarding me, regardless of whoever the US Attorney may have been? If so, did these news media representatives ever pass on information they suggest they gathered about me as a result of being embedded and, if so, did they do so with the expectation that any such information would be used to trigger an investigation of me by this office?

I contend that the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder

against me because it specifically targeted people who were: (1) born in 1962, (2) had attained the age of 19 when the law took effect, (3) received benefits while in high school before graduating in 1980 or earlier, (4) took time off before beginning postsecondary school in September 1981 or later during the 1981 academic year, (5) received benefits between September 1981 and August 1982, and (6) had them terminated completely in August 1982 instead of having them phased out because of the Omnibus Budget Reconciliation Act of 1981. I fit into this very narrowly defined category. Did any members of Congress or their staffs – either committee or member staffers – ask this US Attorney's office to assist the Congress in legislative efforts to execute that or any other bill of attainder against me and, if so, did anybody in this office take any actions in response? What was the result of any such endeavors, and did they produce information, whether fakery or not, in the process?[7] Did anybody in the above-mentioned category seek assistance retaliating against me because, on or

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[7] See, for instance, Dino Brugioni, *Photo Fakery: The History and Techniques of Photographic Deception and Manipulation* (Dulles, VA: Brassey's, 1999). Brugioni is a founder of the Central Intelligence Agency's (CIA) National Photographic Interpretation Center; Victor Ostrovsky with Claire Hoy, *By Way of Deception* (New York: St. Martin's Press, 1990) Also, see Antonio J. Mendez with Malcolm McConnell, *The Master of Disguise: My Secret Life in the CIA* (New York: William Morrow and Co., Inc., 1999); The definition of deception in Federal Standard 1037C, "Telecommunications: Glossary of Telecommunications Terms," http://www.its.bldrdoc.gov/pub/fs-1037, as of 10:25 A.M. 25 March 2006 is useful, too.

about December 6, 1991, I gave a sworn statement to the military police at Yongsan Army garrison in Seoul, ROK – where the headquarters for the United Nations Command and United States Forces Korea is – complaining about a foreign government's espionage activities? Did this US Attorney's office initiate an investigation of me as a result? Were there any other inquiries about me, say from officials of the city and state of New York, or anyplace else?

I would request the most thorough search possible. Should a search of automated indices using my name uncover nothing, please check using the following aliases: J.R., Jimbo, Jimmy, Jim, D2, Chivas, Jimbone, T-bone, or any aliases with references to the Bronx. Moreover, I request any records, to include visual and/or acoustic information and/or written material/data, whether the product of fakery or not.

I am a citizen of the United States and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than $10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than $5,000. I request a fee waiver in the public interest.

Sincerely yours,

"s/James Reynolds"

Appendix E: FAX Cover Letter Sending the FOIA Requests to the DOJEOUSA

4/22/2007 1:00 PM FROM: Jim Reynolds TO: 1 202 616-6478 PAGE: 001 OF 010
820 Edison Ave
Bronx, NY 10465
Confidential fax
To: Executive Office for US Attorneys, FOIAIPA Unit
Fax Number: 1 202 616-6478
From: James Reynolds
Fax Number: none
Business Phone:
Home Phone: (718) 829-3817
Pages: 10
Date/Time: 4/22/2007 1:00:15 PM
Subject: FOIA Request Follow Up
I sent a FOIA request to all 93 US Attorney's offices back in February and, to date, I have received approximately 50 responses; most - though not all - of which said my request was forwarded to this office in accordance with 28 C.F.R. section 16.3. As I mentioned in bold-face type above each of the three different (content-wise) letters, the same request went to each US Attorney's office, except the four in Florida and the one in Massachusetts. I would be especially interested to know if here exists concerning me any 302 reports like those I read about online @ http://www.ganglandnews.com/column530. htm.

Appendix F: Initial FOIA Response from the DOJEOUSA

U.S. Department of Justice
Executive Office for United States Attorneys Stamp: MAR 12, 2007
Freedom of Information & Privacy Staff
600 E Street, N. W. Suite 7300. Bicentennial Building
Washington, DC 20530-0001
(202) 616-6757 FAX: 616-6478
(wwwusdoj.gov/usao)
Requester: James J. Reynolds Request Number: 07-707
Subject: Self Stamp: JUN 11, 2007
Dear Requester:

The Executive Office for United States Attorneys (EOUSA) has received your Freedom of Information Act and/or Privacy Act request. The EOUSA is the official record keeper for all records located in this office and the various United States Attorney's offices.

You requested information which is not information maintained by the EOUSA or by the individual United States Attorney's Offices, but is maintained by the Department of Defense (DOD). Please contact the agency directly at the following address:
Department of Defense
Office of Freedom of Information/Security Review
1155 Defense Pentagon
Washington, D.C. 20301-1155
[ ] Please note that your original letter was split into separate files ("requests'), for processing purposes, based on the nature of what you sought. Each file will have a separate Request Number (listed

below), for which you will receive a separate response.
NOT SPLIT

This is a final action on this above-numbered Request. You may appeal my decision on this request by writing within 60 days from the date of this letter, to Office of Information and Privacy. Department of Justice, 1425 New York Avenue. Suite 11050, Washington, D.C. 20530-0001. Both the envelope and letter of appeal should be marked "FOIA Appeal." If you are dissatisfied with the result s of any such administrative appeal, judicial review may thereafter be available in U.S. District Court. 28 C.F.R. § 16.9.

Sincerely,

"s/ William G. Stewart II"

William G. Stewart II

Assistant Director

Appendix G: Administrative Appeal of EOUSA FOIA Denial

James Reynolds
820 Edison Ave
Bronx, NY 10465
SSAN: 104-52-9072
Date of Birth: June 24, 1962
June 12, 2007
Office of Information and Privacy
U.S. Department of Justice
Flag Building, Suite 570
Washington, DC 20530-0001
To Whom It May Concern:
This is an appeal of the response I finally received after more than three months to FOIA request # 07-707 from the Executive Office for United States Attorneys. In essence, this is a going-through-the-motions exercise, since it appears, judging by the reply I received, that the person responding to my FOIA request did not read it very carefully. Nor did anybody conduct a search of records, as I asked. It would not be surprising – in fact, it would be expected – if your office also deemed my FOIA request appeal to be a nuisance. This appeal, therefore, fulfills the requirement that allows me to seek judicial review in US District Court.
Sincerely,
"s/James Reynolds"
James Reynolds

Appendix H: Acknowledgement of Receipt of Administrative Appeal by DOJOIP

U.S. Department of Justice
Office of Information and Privacy
Telephone: (202) 514-3642 Washington, D.C. 20530
Stamp: JUN 22 2007
Mr. James Reynolds
820 Edison Avenue
Bronx, NY 10465
Re: Request No. 07-707
Dear Mr. Reynolds:

This is to advise you that your administrative appeal from the action of the Executive Office for United States Attorneys was received by this Office on June 19, 2007.

The Office of Information and Privacy, which has the responsibility of adjudicating such appeals, has a substantial backlog of pending appeals received prior to yours. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number 07-1741. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. We regret the necessity of this delay and appreciate your continued patience.

Sincerely,
"s/Priscilla Jones"
Priscilla Jones
Supervisory Administrative Specialist

Appendix I: DOJ OIP Appeal Reply

U.S. Department of Justice
Office of Information and Privacy
Washington, D.C. 20530
Stamp: SEP 28 2007

Mr. James Reynolds
820 Edison Avenue
Bronx, NY 10465

Re: Appeal No. 07-1741
Request No. 07-707
KAH:CG

Dear Mr. Reynolds:

You appealed form the action of the Executive Office for United States Attorneys (EOUSA) on your request for access to records pertaining to yourself.

After carefully considering your appeal, and as a result of discussions between EOUSA personnel and a member of my staff, I am remanding your request to EOUSA for a search for responsive records. If EOUSA locates responsive records through this search, it will send any and all releasable portions of them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by EOUSA.

If you are dissatisfied with my action on your appeal, you may seek judicial review in accordance with 5 U.S.C. § 552(a)(4)(B).

Telephone: (202) 514-3642
Associate Director

Sincerely,

"s/Janice Galli McLeod"
Janice Galli McLeod

Appendix J: DOJ EOUSA Response

U.S. Department of Justice
Executive Office for United States Attorneys
Freedom of Information & Privacy Staff
600 E Street, N. W. Suite 7300, Bicentennial Building
Washington, DC 20530-0001 Stamp: DEC 7, 2007
(202) 616-6757 FAX: 616-6478 (www.usdoj.gov/usaoj
Requester: James J. Reynolds Request No.: 07-4118
Subject: Self (database search for name)/Data Analysis

The Executive Office for United States Attorneys (EOUSA) has received your Freedom of Information Act/Privacy Act (FOIA,PA) request. It has been assigned the above number. Please give us this number if you write about your request. If we need additional information, we will contact you within two weeks.

Your request will be placed in the order in which it was received for processing, unless it is a very large request (Project Request). Then, it will be placed in a separate group of Project Requests, which are also processed in the order received.

EOUSA makes every effort to process most requests within a month (20 working days). There are some exceptions; for example, Project Requests usually take approximately nine months to process. Requests for "all information about myself in criminal case files" are usually Project Requests. If you have made such a request, you may either write us and narrow your request for specific items, or you may expect that the processing of your request may take nine months

from the date of this letter.

By making a FOIA/PA request, you have agreed to pay fees up to $25, as stated in 28 CFR § 16.3(c), unless you have requested a fee waiver. Please note that pursuant to 28 CFR § 16.11, if you have not been granted a fee waiver, we are required to charge fees for time used to search for the documents you have requested and for duplication of all pages released to you. Normally, search time is charged at a rate of $28 per hour after the first two hours which are free, and duplication fees are $0.10 per page after the first 100 pages which are free. Please do not send any payment at this time! If we anticipate that fees will exceed $25 or the amount you have stated in your letter (if greater than $25), we will normally notify you of our estimate of fees. After we have received your agreement to pay for the expected fees (or you have narrowed your request to reduce fees) and we have processed your request, we will require payment for the accumulated charges before we release documents to you. Without such payment, your request file will be closed without further action.

If you wish to revise your request to try to reduce fees, you may use the attached form. If you do not wish to incur fees for your request as it is now stated, please submit this form (or your letter revising your request) to us within 15 days so that your request, and fees, can be limited.

Sincerely,

"s/ William G. Stewart II"

William G. Stewart II

Assistant Director

Appendix K: Appeal by Fax of Fee Imposition Decision

12/24/2007 2:54 PM FROM: Jim Reynolds TO: 1-202-616-6478 PAGE: 001 OF 001
FAX 820 Edison Ave Bronx, NY 10465
To: USDOJ Executive Office for US Attorneys
FOIA/PA Section
Fax number: 1-202-616-6478
From: James Reynolds
Fax number: none
Business phone:
Home phone: (718) 829-3817
Date & Time: 12/24/2007 2:54:31 PM
Pages: 1
Re: FOIA Request # 07-4118
To whom it may concern:
I received a letter from William G. Stewart II dated Dec. 7, 2007 confirming receipt of my FQIA request and assigning it request# 07-4118; yet the only FOIA request I have ever submitted to the EUSA was dated Feb. 19, 2007 and received the # 07-707. I have not sent any requests since. It is, however, odd occurrences such as this that prompted me to submit the initial[sic] request. I lost a flash drive over a month ago that may have had a copy of my Feb. 2007 FOIA request; so perhaps whoever found my flash drive decided to pretend to be me and submit a request. Since I am unaware of what is contained in the request # 07-4118, I do not know how to respond. Moreover, it has been virtually impossible over the past 7 years or so to get legal assistance - I was a defendant in a lawsuit in 2001 and was unable to get a lawyer to defend me - therefore I would invoke my right to

have an attorney present or to consult one prior to answering questions, as it is not clear that the USDOJ did not play a role in preventing[sic] me from obtaining legal counsel in the first place.

Appendix L: EOUSA Fee Assessment

U.S Department of Justice
Executive Office for United States Attorneys
Freedom of Information and Privacy Staff *Suite 7300, Bicentennial Building (202) 616-6757*
600 E Street, N. W. FAX (202) 616-6478
Washington, DC 20530 Stamp: JAN 10 2008 resent
Requester: James J. Reynolds
Request No. 07-4118 Stamp: DEC 21 2007
Dear Mr. Reynolds:

We are currently searching for references in our case management database for information responsive to your FOIA/PA request (for records on yourself). Federal Regulation 28 CFR 16.11(1) provides that our office may collect an advance payment before we continue processing your request if we estimate fees will exceed $250.00. In your case, the EOUSA Case Management Staff has informed us that a complete search will take require 29.5 hours for a total cost of $2,568.80. We do not know prior to a complete search whether any records pertaining to you would be found. Once processiing has been completed and a final charge is known, you will be required to submit the remaining fee before documents will be released to you.

Accordingly, an advance payment of $2,568.80.00 in the form of a check or money order, payable to the Treasury of the United States, must be received by this office before we will continue processing your request. Please indicate on the face of the check the above request number and mail it to the above address.

If you wish to reduce your fees, you may

reformulate your request by limiting the documents to a specific category or categories. Or, if you specify that you will only pay up to a certain amount, we will process your case up to that amount. Finally, keeping in mind that the first two hours were free, you may direct that we terminate your search.

Per 28 C.F.R. 16.11(i), your request is not considered received until we receive a response from you. Please respond within 30 days of the date of this letter, or this matter will be closed. If you wish, you may use the attached form to indicate your wishes. If you have any questions, please call Attorney Advisor Garry Stewart at 202-616-3450.

Sincerely,

"s/William G. Stewart II"

William G. Stewart II

Assistant Director

Note: You may appeal this response by writing within 60 days to the Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington D.C. 20530-0001.

Appendix M: Fee Waiver Denial Appeal by Fax

2/14/2008 11:56 AM FROM: Jim Reynolds TO: 1 202 616—6478 PAGE: 001 OF 001

820 Edison Ave Bronx, NY 10465

To: Office of Information and Privacy

Fax number: 1 202 616-6478

From: James Reynolds

Fax number: none

Business phone:

Home phone: (718) 829-3817

Date & Time: 2/14/2008 11:56:29 AM

Pages: 1

Re: Appeal FOIA Request # 07-4118

To whom it may concern:

This is to appeal the decision to deny a fee waiver and charge an amount I cannot afford before conducting a search pursuant to my FOIA request # 07-4118. The next step, as I understand it, is to seek judicial review.

Sincerely,

James Reynolds

Appendix N: EOUSA Fee Waiver Denial

United States Department of Justice
Executive Office for United States Attorneys
Freedom of Information and Privacy Staff *Suite 7300, Bicentennial Building (202) 616-6757*
600 E Street, N. W. FAX (202) 616-6478
Washington, DC 20530

Request Number: 07-4118 MAY 13 2008
Requester: James J. Reynolds
Dear Mr. Reynolds:

In your request letter dated, February 19, 2007, you asked that fees for your request be waived. I regret to inform you that your request for a fee waiver is denied. Federal regulation 28 CFR 16.11(k) sets forth the requirements for a waiver or reduction of fees. After carefully considering your FOIA request in the context of 28 CFR 16.11(k), I have determined that your request does not meet the requirements for the reasons listed below.

Your request must demonstrate that disclosure of the information you have requested is "in the public interest", and disclosure is not primarily for a commercial purpose. Your request is obviously not for a commercial purpose, but neither is disclosure in the public interest. For disclosure of information to be in the public interest, disclosure must be "likely to contribute significantly to the public understanding of the operations or activities of the government".

28 CFR 16.11(k) requires that the subject of the requested records must concern identifiable operations or activities of the federal government, but in your case, you are the subject of the request. In addition, 28 CFR 16.11(k) requires: "The

disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester." In your case, your request contributes to your individual understanding as opposed to the understanding of a broad audience of persons.

Finally, it is well settled that indigence alone, without a showing of a public benefit, is insufficient to warrant a fee waiver. Accordingly, your request is denied.

Sincerely,

William G. Stewart II

Assistant Director

Note: You may appeal this response by writing within 60 days to the Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington D.C. 20530-0001.

Appendix O: Appeal by FAX to OIP of Fee Waiver Denial

6/9/2008 1:23 AM FROM: Jim Reynolds TO: 1 202 616-6478 PAGE: 001 OF 001

820 Edison Ave Bronx, NY 10465

To: USDOJ OFFICE OF INFPORMATION AND PRIVACY

Fax number: 1 202 616-6478

From: James Reynolds

Fax number: none

Business phone:

Home phone: (718) 829-3817

Date & Time: 6/9/2008 1:23:53 AM

Pages: 1

Re: APPEAL FOIA #07-4118

TO whom it may concern:

I hereby appeal the denial by William G. Stewart II, Executive Office for United States Attorneys, dated May 13, 2008, requesting a search at no cost to me.

James Reynolds

Appendix P: OIP Ruling on Fee Waiver Denial

U.S. Department of Justice Office of Information and Privacy
Telephone: (202) 514-3642 Washington, D.C. 20530
Stamp: OCT 24 2008
Mr. James Reynolds Re: Appeal No. 08-1123
820 Edison Avenue Request No. 07-4118
Bronx, NY 10465 JGM: CGG
Dear Mr. Reynolds:

You appealed the fee waiver determination made by the Executive Office for United States Attorneys (EOUSA) on your request for access to records pertaining to yourself.

The statutory standard for evaluating fee waiver requests provides that fees shall be waived or reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). In determining whether you have satisfied this statutory standard, I considered the six factors set out in the Department regulation that puts this statutory standard into effect. *See* 28 C.F.R. § 16.11(k) (2008). The first four of these factors concern the "public interest" requirement; the fifth and six factors concern whether your interest in the records is primarily commercial.

On the basis of all of the information available to me, I have concluded that your request for a waiver of fees was properly denied. Although the records you seek do concern the operations or activities of the government, and you do not

appear to have an overriding commercial interest in the records, you have not satisfied other relevant factors, in particular, public interest factor three.

Under factor three, you must demonstrate that you have both the intent and the ability to disseminate the requested information to the general public. You have not done so. A release to you would not contribute to "public understanding." In addition, inasmuch as you are the subject of the requested records, it appears that the only person who would benefit from their disclosure is you. The grant of a fee waiver on this basis would not contribute to "public understanding" as required by the fee waiver standard. Accordingly, your appeal is denied.

If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

"s/Janice Galli McLeod"

Janice Galli McLeod

Associate Director

Appendix Q: Final OIP Ruling on the Initial FOIA Request, the Fee Assessment, and Fee Waiver Denial Appeals

U.S. Department of Justice
Office of Information and Privacy
Telephone: (202) 514 3642 Washington, D. C. 20530
Stamp: DEC 09 2008
Mr. James Reynolds Re: Appeal No. 08-1123
820 Edison Avenue Request No. 07-4118
Bronx, NY 10465 JGM:CG
Dear Mr. Reynolds:

You appealed from the fee estimate and the fee waiver determination made by the Executive Office for United States Attorneys (EOUSA) on your request for access to records pertaining to yourself. Because it would be unnecessary to adjudicate your appeal of EOUSA's fee estimate if your request for a fee waiver is granted, I will consider your request for a fee waiver first.

The statutory standard for evaluating fee waiver requests provides that fees shall be waived or reduced "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S .C. § 552(a)(4)(A)(iii). In determining whether you have satisfied this statutory standard, I considered the six factors set out in the Department regulation that puts this statutory standard into effect. The first four of these factors concern the "public interest" requirement; the fifth and sixth factors concern whether your interest in the records is primarily commercial. 28

C.F.R. § 16.11(k) (2008).

On the basis of all of the information available to me, I have concluded that your request for a fee waiver was properly denied and therefore, I am affirming that decision. Although the records you seek in part concern the operations or activities of the government and you do not appear to have an overriding commercial interest in the records, you have not satisfied factors two, three and four.

In order to satisfy fee waiver factor two, you must make an adequate showing the release of the information to you will likely contribute to an understanding of government operations or activities. In this case, the subject of the requested records is yourself. You have not shown how information that pertains only to yourself would be "meaningfully informative about government operations." McDade v. Executive Office for U.S. Attorneys, No. 03-2946, slip op. at 8-9 (D.D.C. Sept. 29, 2004).

In order to satisfy fee waiver factor three, which requires that the release of records to you contribute "to public understanding," you must substantiate that you have both the intent and the ability to disseminate the information to the general public. You have not done so in any manner in either your request or your appeal. Further, inasmuch as the subject of the requested records is yourself, it appears that the only person who would benefit to any discernable extent from the release of these records is you. Thus, it is you, and not the general public, that would be the primary beneficiary of any release. See McDade,

No. 03-1946, slip op. at 9 (D.D.C. Sept. 29, 2004) (concerning where intended audience is requester only, third fee waiver factor is not met).
Your appeal letter dated February 14, 2008, indicates that your sole basis for requesting a fee waiver was EOUSA's charge of "an amount [you] cannot afford." As you may already be aware, indigence or the inability to pay, does not entitle you to a fee waiver. This is well supported by case law. See, e.g., Ely v. U.S. Postal Serv., 753 F.2d 163, 165 (D.C. Cir. 1985) (indigence alone insufficient basis for granting fee waiver; "Congress rejected a fee waiver provision for indigents"); Durham v. U.S. Dep't of Justice, 829 F. Supp. 428, 435 n.10 (D.D.C. 1993) (finding indigence alone does not constitute adequate grounds for granting fee waiver).
Finally, in order to satisfy fee waiver factor two, you must make an adequate showing that release of the information to you will be likely to contribute to public understanding of the operations and activities of the government. In order for the disclosure to be "likely to contribute" to an understanding of specific government operations or activities, the disclosable portions of the requested information must be meaningfully informative in relation to the subject matter of the request. See, e.g., Klein v. Toupin, No. 05-647, 2006 U.S. Dist. LEXIS. 32478, at
* 11-12 (D.D.C. May 24, 2006) (reiterating that conclusory and unsupported assertions of misconduct are not "meaningfully informative" of government operations); cf. NARA v. Favish, 541 U.S. 157, 174 (2004) (holding, in the context of exemption 7(C)'s closely related public — interest

balancing test, that where the "public interest" asserted is to show negligent or improper performance of agency officials' duties, "the requester must establish more than a bare suspicion in order to obtain disclosure"). Your letter of appeal does not contain any support for your assertion that "there are indicators that [you] were a human subject in [AIDS virus] research" or that your "image was transferred into simulations ... to depict a virtual-reality version of [you] as a promiscuous homosexual" among other things. Therefore, you have not satisfied the requirement that the requested records are likely to contribute to public understanding.

With regard to your appeal of EOUSA's fee estimate of $2,568.80, based upon the types of records you seek, the number of offices and locations that must be searched in order to find records responsive to your request, and following discussions between EOUSA personnel and a member of my staff, I have determined that EOUSA's fee estimate was proper. EOUSA's estimated fee is in accordance with the Department of Justice's regulations implementing the Freedom of Information Act. See 28 C.F.R. § 16.11(c) (2008).

Furthermore, by letter dated January 10, 2008, EOUSA informed you that it had concluded its initial two-hour search without cost to you for responsive records. EOUSA estimated that 29.5 more hours of searching would be necessary in order to fulfill your request. EOUSA also informed you that if you wish to reduce your fees, you may reformulate your request by limiting the documents

to a specific category or categories. If you would like to have EOUSA continue processing your request or a portion of it, you must contact EOUSA directly within sixty days of the date of this letter with regard to this fee matter. Because EOUSA has already closed your request, if you decide to pursue this matter, it will reopen your request under a different number.

Lastly, with regard to the specific questions you asked in your initial Request letter dated April 19, 2007, please note that the Freedom of Information Act does not require federal agencies to answer questions or to create explanatory materials in response to a FOIA request, but rather is limited to requiring agencies to provide access to reasonably described, nonexempt records. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1975); Zemansky v. EPA, 767 F.2d 569, 574 (9th Cir. 1985).

If you are dissatisfied with my action on your appeal, you may file a lawsuit in accordance with 5 U.S.C. § 552(a)(4)(B).

Sincerely,

"s/Janice Galli McLeod"

Janice Galli McLeod

Associate Director

Appendix R: Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

James J. Reynolds
820 Edison Ave
Bronx, NY 10465,
Plaintiff,

vs. "Jury Trial Demanded"

The Attorney General of the United States of America
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001,
Defendant.

This action seeks judicial review to reverse Freedom of Information Act (FOIA) and fee waiver denials by the Executive Office for United States Attorneys (EOUSA) of the United States Department Justice (USDOJ), upheld on administrative appeal by the USDOJ Office of Information and Privacy (OIP). 5 U.S.C. § 552(a)(4)(B)

Plaintiff respectfully alleges that:

1. On or about February 24, 2007, I submitted a request for information under 5 U.S.C. § 552 to approximately 93 US Attorneys' offices (what I believed to be all of them). With the exception of the 4 in Florida to which I sent one version, and the one in Massachusetts to which I sent another adaptation; I sent the same FOIA request to the other approximately 88 US Attorneys. Ex. A.
   a. Between roughly then and April 2008 I eventually received approximately 57

replies from various US Attorneys' Offices, most of which said the proper place to make the FOIA request was the EOUSA and that they would forward my requests there; a few, however, responded differently. Ex. B.

b. Having heard nothing from the EOUSA, I faxed a copy of the requests there on or about April 22, 2007, Ex. A, eventually receiving a reply on or about June 11, 2007, which I interpreted as essentially a denial of my request. It assigned my request number 707. Ex. C.

c. I received a denial reply from the Office of the Inspector General (OIG), too, even though I had not addressed a FOIA request to the OIG. Ex. D.

d. None of the replies, except that of the OIG, said anything about, let alone purported to certify that anybody in the respective office conducted a search for records.

2. In a letter dated June 12, 2007, I appealed what I interpreted to be the EOUSA denial to the Office of Information and Privacy (OIP). Ex. E. The assumption is the OIG denial was included in that appeal, too.

3. In a letter dated June 22, 2007, the OIP acknowledged receipt of my administrative appeal, informed me of their backlog, assigned me a number, told me to use that number in any correspondence, and said I would be notified of a decision once it was made. Ex. F.

4. In a letter dated September 28, 2007, Ex. G, Janice Galli McLeod, Associate Director of the OIP said:

"After carefully considering your appeal, and as a result of discussions between EOUSA personnel and a member of my staff, I am remanding your request to EOUSA for a search for responsive records. If EOUSA locates responsive records through this search, it will send any and all releasable portions of them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by EOUSA." She also said I could seek judicial review of her decision as per 5 U.S.C. § 552(a)(4)(B). Since it is still not knowable, claims by Ms. Galli McLeod that it has notwithstanding, Ex. P, if the EOUSA has ever conducted the free two-hour search, I now seek to have this court direct it to do so.

5. In a letter dated December 7, 2007, the EOUSA acknowledged receipt of my FOIA request, assigned it number 07-4118, and said that "search time is charged at a rate of $28 per hour after the first two hours which are free, and duplication fees are $0.10 per page after the first 100 pages which are free." Ex. H.
   a. I responded by FAX, Ex. I, on or about December 24, 2007, stating, among other things:

I received a letter from William G. Stewart II dated Dec. 7, 2007 confirming receipt of my FOIA request and assigning it request # 07-4118; yet the only FOIA request I have ever submitted to the EUSA was dated Feb. 19, 2007 and received the # 07-

707. I have not sent any requests since ... Since I am unaware of what is contained in the request # 07-4118, I do not know how to respond.

b. I also received a letter dated December 21, 2007 from the EOUSA, Ex. J, stating: We are currently searching for references in our case management database for information responsive to your FOIA/PA request (for records on yourself). Federal Regulation 28 CFR 16.11(1) provides that our office may collect an advance payment before we continue processing your request if we estimate fees will exceed $250.00. In your case, the EOUSA Case Management Staff has informed us that a complete search will take require 29.5 hours for a total cost of $2,568.80. This was the first indication of any search but gave no details. Was it a few key strokes on a computer taking seconds or minutes? The answer is not knowable from this letter.

6. I appealed this decision by FAX to the OIP on or about February 14, 2008, reiterating my request for a fee waiver, too. Ex. K.
7. By letter dated March 10, 2008, EX. L, the OIP acknowledged receipt of my administrative appeal, informed me of their backlog, assigned me a number, told me to use that number in any correspondence, and said I would be notified of any decision.
   a. Meanwhile the EOUSA in a letter dated May 13, 2008, Ex. M, denied again my fee-waiver request, thus confusing me, citing a public-interest-in-disclosure requirement, which would be "likely to contribute significantly to the public

understanding of the operations or activities of the government." Stating also:

28 CFR 16.11(k) requires that the subject of the requested records must concern identifiable operations or activities of the federal government, but in your case, you are the subject of the request. In addition, 28 CFR 16.11(k) requires: "The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester." In your case, your request contributes to your individual understanding as opposed to the understanding of a broad audience of persons.

b. I appealed this again to the OIP by FAX on or about June 9, 2008. Ex. N.

8. Janice Galli McLeod, Associate Director at the OIP upheld the EOUSA decision regarding appeal number 08-2106 in a letter dated October 24, 2008, stating I had failed to demonstrate the ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities. Ex. O.[8]
9. In another letter dated December 9, 2008, Ex. P, Ms. Galli McLeod upheld the EOUSA

[8] It is not clear why my FOIA request and appeal both had two numbers. To the extent that what I initially submitted to the EOUSA contained the three FOIA requests and stated which US Attorneys were sent which version, and the multiple FOIA request numbers and appeal numbers reflect multiple FOIA requests; there is a shortage of one request number, which likely would have resulted in an appeal, too.

decision regarding appeal number 08-1123. The reasons for denying the administrative appeal of the fee waiver request were: (1) I had failed to demonstrate the ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities; (2) the inability to pay alone is insufficient to grant fee waiver; (3) EOUSA had concluded the required two-hour search; and (4) there is no requirement for EOUSA officials to answer questions. She never addressed the OIG denial.[9]

10. Regarding my ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities, I have both. As a Ph.D. student in US history in the Graduate School of Arts and Sciences at Fordham University, I am very interested in US constitutional history and, I would argue, a lot more familiar with the topic than most.
    a. Since "I contend that the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against me," see the Declaration of James Reynolds (Reynolds Dec.) ¶ 3; Ex. Q , in my FOIA request, I sought any records that may exist that might answer the question: "Did any members of Congress or their staffs —

---

[9] While it may be true I never addressed the OIG denial in the appeal, it is also true I never submitted a FOIA request to the OIG in the first place; yet I received a letter of denial, nonetheless.

either committee or member staffers — ask this US Attorney's office to assist the Congress in legislative efforts to execute that or any other bill of attainder against me and, if so, did anybody in this office take any actions in response?" Ex. A, 3.

i. To the extent that anybody in Congress may have sought help with executing a bill of attainder, it would appear to concern two constitutional issues: (1) the prohibition against bills of attainder, U.S. Const. art. I § 9; and (2) the provision vesting the power of the executive in the "President of the United States of America." U.S. Const. art. II § 1.

ii. Can there be a better reason to grant a fee waiver than to support an effort to let the American public know if significant portions of their Constitution have been effectively scrapped? Any records indicating this to be the case would certainly provide excellent evidence on which to develop a scholarly article for publication in the short term and a book length study in the long term. This, in turn, could open opportunities to present any findings at conferences.

which I would try to take full advantage of.

b. Here is one of the indicators concerning the depiction of me as a promiscuous homosexual. Over roughly the past two decades, I have routinely been the target of homosexual harassment for reasons I do not know but have tried to determine. I have suspected for some time now that there may be things about me that I do not know, but others do. This could be one of them. Between roughly the 15th and 25th days of April 1991, while on leave en route to my duty station with the US Army in the Republic of Korea, I vacationed in Honolulu, Hawaii, staying at the Ilikai Hotel. There (in Honolulu) I met somebody who, until late-November or early December 2008, I had believed to be a woman whose given name (what Americans commonly call a first name) was Kaoru and whose family (last) name I have intentionally omitted. However, while preparing for the Asian history field of my comprehensive exams, required for the Ph.D. in US history, I read about the Japanese Foreign Minister during the Meiji Restoration whose family (last) name was Inoue and whose given (first) name was Kaoru.[10] He was a man, which means Kaoru is a man's name, which

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[10] Gary D. Allinson, *The Columbia Guide to Modern Japanese History* (New York: Columbia University Press, 1999), 132-133.

means the person whom I was socializing with in Honolulu in April 1991 may have been a male cross-dresser. Reynolds Dec. ¶¶ 4-5.

i. To the extent that any bill of attainder execution attempts may have involved the potential use of cross-dressers made to be seen with me in public to provide misleading visual information that, since I was an Army Officer at the time, would be justification to start a criminal investigation under the Uniform Code of Military Justice, it would be in the public interest to know. Moreover, providing any evidence of involvement by politicians that there might be in any records released pursuant to my FOIA request to the opposition research operation in any potential political opponents' election campaign organizations would be a very effective way of disseminating the information, too.

ii. Furthermore, I have not ruled out using any potential information of malfeasance on the part of politicians contained in any records that might come my way from the FOIA request

to support my own electioneering efforts. This would be in the public interest, "because it is likely to contribute significantly to public understanding of the operations or activities of the government" by showing what ought not to happen. 5 U.S.C. § 552 (a)(4)(A)(iii).

c. Regarding Ms. Galli McLeod's assertion that "by letter dated January 10, 2008, [actually, the resent letter dated December 21, 2007] EOUSA informed you that it had concluded its initial two-hour search without cost to you for responsive records." Ex. P; Ex. J. The letter was ambiguous and said only two things concerning records searches.

   i. "We are currently searching for references in our case management database for information responsive to your FOIA/PA request (for records on yourself)." This was the first indication of any search but gave no details. Was it a few key strokes on a computer taking seconds or minutes? The answer is not knowable from this letter.

   ii. It also stated "Finally, keeping in mind the first two hours were free, you may direct that we

terminate your search." This is not the same as asserting the EOUSA searched for two hours, or any sufficient time. Does "your search" here mean the EOUSA's search pursuant to my FOIA request? So, to the degree that New York State's Freedom of Information Law (FOIL) might be informative, the statements in the EOUSA letter are "not sufficient to permit determination of the factual question as to whether the respondent's agents had in fact conducted a diligent search" Key v. Hynes, 205 AD 2d 779, 781.

iii. Nor is there any discussion of the results of the search. Again, to the extent the New York FOIL is useful, there was nothing in the December 21, 2007 letter that can be said to "certify that" the EOUSA does "not have possession of [requested] record[(s)] or that such record[(s)] cannot be found after diligent search," FOIL § 89 3. (a); *Bellamy v. New York City Police Dept.* (1 Dept. 2000) 272 A.D. 2d 120, 123; *DeFabritis v. McMahon* (3 Dept. 2003) 301

A.D. 2d 892; *Key v. Hynes*, 205 AD 2d 779, 781.

d. Regarding Ms. Galli McLeod's assertion that "there is no requirement for EOUSA officials to answer questions," Ex. P, 3, the questions were implied requests for records.

11. WHEREFORE, plaintiff respectfully prays that:

a. This court enjoin government agencies from withholding the requested records and order the production to the complainant (at no financial cost to the plaintiff) of any and all agency records withheld from him and assess against the United States litigation costs incurred by the complainant or, in the alternative, certify unambiguously that, after a diligent search, no responsive records can be found.

b. To the extent that the US government might contain records pertaining to my request that would otherwise be responsive to my request, except for some sort of court order emanating from: (1) an Article III court; (2) a military court, commission, or other judicial body provided for in 10 U.S.C. or some other statute; or (3) a secret court (star chamber) in the legislative branch, this court would lift any such court order.

Dated this 15th day of January, 2009

By: "s/James Reynolds"

James J. Reynolds

Pro Se, 820 Edison Ave. Bronx, NY 10465

Appendix S: Reynolds' Declaration Pursuant to 28 U.S.C. § 1746 in Support of the Complaint

James J. Reynolds
Pro Se
820 Edison Ave.
Bronx, NY 10465
Tel: (718) 829-3817

UNITED STATES COURT
SOUTHERN DISTRICT OF NEW YORK

James J. Reynolds,
Plaintiff,
vs.

The Attorney General of the United States of America
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001,
Defendant.

DECLARATION OF JAMES J. REYNOLDS

Pursuant to 28 U.S.C. § 1746 James J. Reynolds declares as follows:

1. I am the pro se plaintiff in this action.
2. I was assigned to the protocol office of the US Army Infantry Center (USAIC) at Fort Benning, GA between 1988 and 1990 where I arranged all aspects of many visits by numerous distinguished United States (US) and foreign visitors to Fort Benning.
3. I (1) was born in 1962, (2) had attained the age of 19 when the Omnibus Budget Reconciliation Act of 1981 took effect, (3) received benefits while in high school before graduating in 1979, (4) took time off before beginning postsecondary school in September 1981, (5) received benefits between

September 1981 and August 1982, and (6) had them terminated completely in August 1982 instead of having them phased out because of the Omnibus Budget Reconciliation Act of 1981, as everybody then receiving the entitlement who was not in the category just described did.

4. Over roughly the past two decades, I have routinely been the target of homosexual harassment for reasons I do not know but have tried to determine. I have suspected for some time now that there may be things about me that I do not know, but others do.

5. Between roughly the 15th and 25th days of April 1991, while on leave en route to my duty station with the US Army in the Republic of Korea, I vacationed in Honolulu, Hawaii, staying at the Ilikai Hotel. There I met somebody who, until late-November or early December 2008, I had believed to be a woman whose given name (what Americans commonly call a first name) was Kaoru and whose family (last) name I have intentionally omitted. Ex. A; Ex. B. However, while preparing for the Asian history field of my comprehensive exams, required for the Ph.D. in US history, I read about the Japanese Foreign Minister during the Meiji Restoration whose family (last) name was Inoue and whose given (first) name was Kaoru. He was a man, which means Kaoru is a man's name, which means the person whom I was socializing with in Honolulu in April 1991 may have been a cross-dresser. Nothing sexual, that I am aware of, happened between us. To my knowledge, nobody except the hotel staff and me were in my hotel room, and I do not recall anybody being in

my room at the same time I was. I remember my copy of Felix Rodriguez, Shadow Warrior came up missing during this time, suggesting somebody beside the hotel staff and me may have been in my room.

I declare under penalty of perjury that the foregoing is true and correct.

I wave [sic] no rights and want an attorney present during any potential questioning by any officials.

Dated this 15th day of January, 2009

By: "s/James Reynolds"

Pro Se

820 Edison Ave.

Bronx, NY 10465

James J. Reynolds

Appendix T: Declaration by Dione Jackson Stearns in Support of Defendant's Motion to Dismiss or, in the Alternative for Summary Judgment

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
James J. Reynolds,
Plaintiff,
v. Civil Action No. 09-00434
The Attorney of the
United States of America
Defendant.

DECLARATION OF DIONE JACKSON STEARNS

I, Dione J, Stearns, declare the following to be a true and correct statement of facts:

1. I am an Attorney-Advisor with the Executive Office for United States Attorneys (EOUSA), United States Department of Justice. In that capacity, my responsibilities include: acting as a liaison with other divisions and offices of the Department of Justice (DOJ) in responding to requests and the litigation filed under both the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2006), amended by the OPEN Government Act of 2007, Pub. L No. 110-175, 121 Stat. 2524, and the Privacy Act of 1974, 5,U.S.C, § 552a (2006) (PA); the review of FOIA/PA requests for access to records located in this office and 94 United States Attorney's offices (USAOs) and the case files arising therefrom; the review of correspondence related to requests; the review of searches conducted in response to requests; the location of responsive records; and preparation of responses thereto by EOUSA to ensure that determinations to withhold or release responsive records are in accordance with the

provisions of both the FOIA and the PA, as well as the DOJ regulations (28 C.F.R. § 16.3 and § 16.40).
2. As an Attorney-Advisor of EOUSA's FOIA/PA unit, I have authority to release and/or withhold records requested under the FOIA/PA, and to explain the rationale for EOUSA's disclosure determinations. The statements I make hereinafter are based on my review of the official files and records of EOUSA, my own personal knowledge, or information acquired by me through the performance of my official duties.
3. Due to the nature of my official duties, I am familiar with procedures followed by EOUSA in responding to Plaintiff's FOIA request.
4. This declaration explains the procedures that were followed in responding to Plaintiff's FOIA request, referenced in his Complaint and the accompanying exhibits and Declaration of James Reynolds, filed on January 15, 2009. (Ex. 1.)

CORRESPONDENCE

5. By letter dated February 19, 2007, Plaintiff submitted a request to United States Attorney's Offices ("USAO") for records pertaining to "any information about me." (Ex. 2.) In Plaintiff's request, he identified the time frame of this request as "over approximately the past two decades." (*Id.*) Plaintiff also requested a public interest fee waiver. Specifically, Plaintiff submitted request letters to the Northern and Middle Districts of Alabama, the District of Arizona, the Eastern and Western Districts of Arkansas, the Central, Eastern, Northern, and Southern Districts of California, the District of Colorado, the District of Columbia, the District of Connecticut, the District of Delaware,

the Southern and Middle Districts of Florida, the Middle and Southern Districts of Georgia, the District of Guam, the District of Hawaii, the District of Idaho, the Central, Northern and Southern Districts of Illinois, the Northern and Southern Districts of Indiana, the Southern and Northern Districts of Iowa, the District of Kansas, the Western District of Kentucky, the Eastern, Middle, and Western Districts of Louisiana, the District of Maine, the District of Maryland, the District of Massachusetts, the Eastern and Western Districts of Michigan, the District of Minnesota, the Northern District of Mississippi, the Western District of Missouri, the District of Montana, the District of Nebraska, the District of Nevada, the District of New Hampshire, the District of New Mexico, the Northern, Southern, and Western, Districts of New York, the Eastern and Middle Districts of North Carolina, the District of North Dakota, the Southern District of Ohio, the Eastern, Northern, and Western Districts of Oklahoma, the District of Oregon, the Eastern and Western Districts of Pennsylvania, the District of Puerto Rico, the District of Rhode Island, the District of South Carolina, the District of South Dakota, the Eastern, Middle, and Western Districts of Tennessee, the Eastern, Northern, and Western Districts of Texas, the District of Vermont, the Western District of Virginia, the Western District of Washington, the Southern District of West Virginia, and the Eastern and Western Districts of Wisconsin.[11] All of these USAOs forwarded Plaintiff's

[11] EOUSA only has record that Plaintiff submitted his February 19, 2007, FOIA request to the seventy-four USAOs listed in this paragraph. In an effort to streamline this litigation, only one

request letter to EOUSA for processing.
6. By letter dated March 12, 2007, EOUSA acknowledged receipt of Plaintiff's requests and informed him that it had assigned Request Number 07-707 to his request for records pertaining to himself. The letter further advised Plaintiff that the information he seeks is not maintained by the EOUSA or by the individual United States Attorney's Offices, rather it is maintained by the Department of Defense. EOUSA also provided the Plaintiff with the address for the FOIA Office in the Department of Defense and advised him that this is the final action on Request Number 07-707. Finally, EOUSA notified Plaintiff of his right to file an administrative appeal with the Office of Information Policy (OIP) (formerly the Office of Information & Privacy), and provided OIP's address. (*See* Ex. 3.)
7. By letter dated June 12, 2007, Plaintiff filed an appeal with the OIP. (*See* Ex. 4.)
8. By letter dated June 22, 2007, OIP acknowledged receipt of Plaintiff's appeal and assigned it appeal number 07-1741. (*See* Ex. 5.)
9. By letter dated September 28, 2007, OIP advised Plaintiff that it was remanding his request for a search for responsive records. (*See* Ex. 6.)
10. By letter dated December 7, 2007, EOUSA opened a new request file for the request that was formerly designated as Request Number 07-707, and assigned it a new request number, 07-4118. In this letter, EOUSA also advised Plaintiff that in accordance with Department of Justice

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copy of Plaintiff's request is attached as Exhibit 2. As Reynolds states, the substance of these letters is essentially the same. (See Exhibit A at p.1, attached to the Complaint.)

regulations, by making a FOIA request he had agreed to pay fees up to $25. (See Ex. 7.)
11. By letter dated December 21, 2007, and resent January 10, 2008, EOUSA advised Plaintiff that a complete search for responsive records will require 29.5 hours for a the total cost of $2,568.80. EOUSA also advised Plaintiff that in accordance with DOJ regulations it was requesting an advance payment of $2,568.80, and that if he would like to reduce the fees by reformulating his request he should contact EOUSA within 30 days of the date of the letter, or this matter would be closed. (See Ex. 8.)
12. By letter dated February 14, 2008, Plaintiff filed an appeal with OIP pertaining to EOUSA's assessed fees and its denial of his fee waiver request. (See Ex. 9.)
13. By letter dated March 10, 2008, OIP acknowledged receipt of Plaintiffs February 14, 2008, appeal and assigned it appeal number 08-1123. (See Ex. 10.)
14. By letter dated May 13, 2008, EOUSA advised Plaintiff that based on the information available it concluded that his request for a fee waiver did not meet the statutory requirements for a waiver or reduction in fees. Accordingly, EOUSA denied Plaintiffs request for a public interest fee waiver. See Ex. 11.)
15. By letter dated June 9, 2008, Plaintiff filed an appeal with OIP and requested a search at no cost, (See Ex. 12.)
16. By letter dated June 30, 2008, EOUSA informed Plaintiff that because he had not responded within 30 days regarding the May 13, 2008 letter

indicating the estimated processing fees, it was closing his file, Request Number 07-4118. EOUSA, however, inadvertently indicated May 13, 2008, as the date that it notified Plaintiff of the estimated processing fees in the June 30, 2008, letter. EOUSA actually notified Plaintiff of the fee estimate by letter dated January 10, 2008.[12] (*See* Exs. 8 & 13.)

17. By letter dated July 2, 2008, OIP acknowledged receipt of Plaintiffs appeal and assigned it appeal number 08-2106. (*See* Ex. 14.)

18. By letter dated October 24, 2008, OIP affirmed EOUSA's May 13, 2008, fee waiver denial in response to appeal number 08-2106. (*See* Ex. 15.)

19. By letter dated December 9, 2008, OIP affirmed EOUSA's fee estimate and fee waiver determination in response to appeal number 08-1123. (*See* Ex. 16.)

BASIS OF FEE ESTIMATE

20. Upon receipt of Plaintiffs FOIA request to seventy-four USAOs, EOUSA determined that Plaintiff's request was a nationwide request. The individual USAOs do not have the database capability to conduct nationwide searches. Thus, EOUSA requested the Case Management Staff, which manages the databases used by the districts for case management, to conduct a nationwide search for responsive records. The Case Management Staff determined that a nationwide search would require the cost of having a contractor create a report for conducting the search. Specifically, Plaintiff

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[12] Plaintiffs response to EOUSA's January 10, 2008, letter was due on February 10, 2009. EOUSA did not close Plaintiffs file until June 30, 2008.

requested roughly twenty-three years worth of data using his name and approximately ten other alias names. As a result, reports would have to be created to search three different systems used to store case data: (i) Docket and Reporting System, (DNR) for case-related data from 1991 and earlier; (ii) the Central System for case- related data from 1992-2003; and (iii) the Legal Information Office Network System (LIONS), which is used for case-related data since 2004). In accordance with Department of Justice regulation, 28 C.F.R. § 16:11 (c)(1)(iii), the Case Management Staff calculated the fee based on the cost of an IT contractor's time needed to create the above-mentioned reports, plus the costs of operating the system.
21. This method of calculating the direct costs associated with computer searches is in accordance with DOJ regulations, which provides that for computer searches of records, requesters will be charged the direct costs of conducting the search. Moreover, the regulation provides that the direct costs include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for responsive records, as well as the costs of operator/programmer salary apportionable to the search. 28 C.F.R. § 16.1 1(c)(1)(iii).
22. Accordingly, EOUSA advised Plaintiff by letter dated January 10, 2008, that the Case Management Staff had conducted a two hour records responsive to his request and that an additional 29.5 hours of search would be required to complete the search. Based on the above analysis, EOUSA estimated that the costs of

searching for the requested records would be $2,568.80, and asked Plaintiff to submit an advance payment in this amount so that the search could be completed. EOUSA has no record of receiving payment in this amount from Plaintiff. Consequently, EOUSA has not completed a search for responsive records.

STATUS OF PLAINTIFF'S REQUEST

23. As stated earlier, the EOUSA advised Plaintiff of the fees involved in processing his request and requested an advance payment of these fees in accordance with DOJ regulations. The OIP has affirmed EOUSA's assessment of processing fees and its denial of Plaintiff's fee waiver request. As of the date of this declaration, Plaintiff has not submitted payment. In the absence of receipt of payment of the processing fees from Plaintiff, the EOUSA considers this matter resolved.

CONCLUSION

24. Each step in the handling of Plaintiff's request has been entirely consistent with EOUSA and the United States Attorney's Office procedures which were adopted to ensure an equitable response to all persons seeking access to records under the FOIA/PA.

I declare under penalty of perjury that the foregoing is true and correct and that Exhibits 1-16 are true and correct copies.

Executed on the 24th day of April 2009 in Washington D.C.

"s/Dione Jackson Stearns"
Dione Jackson Stearns
Attorney Advisor
EOUSA FOIA/PA Staff

Appendix U: District Court Memorandum Opinion & Order

UNITED STATES DISTRICT COURT STAMP: USDCSDNY
SOUTHERN DISTRICT OF NEW YORK DOCUMENT
JAMESJ. REYNOLDS
ELECTRONICALLY FILED
Plaintiff, DOC #: _____
-against- DATE FILED: 7/7/09
THE ATTORNEY GENERAL OF THE 09 Civ. 0434 (SHS)
UNITED STATES OF AMERICA,
Defendant. MEMORANDUM OPINION& ORDER

SIDNEY H. STEIN, U.S. District Judge.

James J. Reynolds, proceeding pro se, challenges the decision by the U S Department of Justice ("DOT'), acting through its Executive Office for United States Attorneys ('EOUSA"), not to provide information that he requested pursuant to the Freedom of Information Act ("FOIA"), 5 U S C § 552. That determination was based on Reynold's refusal to pay the estimated cost of preparing the requested documents and his failure to qualify for a waiver of those costs pursuant to 28 C.F.R. § 16.11(k)(2). The government has moved (1) to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim on which relief can be granted and, in the alternative, (2 for summary judgment in its favor. Plaintiff has not responded to the government's motion, despite notice by the government informing him that it would seek dismissal of the complaint on the additional grounds that the government's motion was unopposed if he failed to respond by June 17, 2009 (See Letter to Judge Sidney H Stein from Brandon H. Cowart, Assistant U.S. Attorney dated

June 25, 2009, Dkt, No. 12; Notice to Pro Se Litigant Who Opposes a Rule 12 Motion Supported by Matters Outside the Pleadings dated April 24, 2009, Dkt. No. 11; Notice to Pro Se Litigant Who Opposes a Motion for Summary Judgment dated April 24, 2009, Dkt. No. 8.) Each of the government's proffered grounds for dismissing the complaint is meritorious.

I. BACKGROUND

Reynolds states he submitted requests to 93 U.S. Attorney's offices in February 2007, seeking any records containing information about him – including information referring to by any of several aliases including "J.R., Jimbo, Jimmy, Jim, D2, Chivas, Jimbone, T-bone, or any aliases with reference to the Bronx" – pursuant to FOIA.[13] (Compl. ¶ 1, Ex. A at 3.) Reynolds' FOIA requests, which were essentially identical, included the statement: "I request a fee waiver in the public interest." (Compl., Ex. A at 4.) Reynolds provided no explanation as to why a waiver of the fee was "in the public interest." The EOUSA consolidated the 74 of Reynolds' requests that it received (Declaration of Dione J. Stearns dated April 24,

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[13] Among other allegations included in his FOIA requests, a representative sample of which is appended to his complaint, Reynolds contends that he was a human subject in AIDS research conducted by the government; the government has depict[ed] a virtual-reality version of me as a promiscuous homosexual and ... there were efforts to make the version of me that exists in physical reality jive with the phony version of me by drugging me and violating me with a foreign object or, maybe even a real homosexual"; and "the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against me." (Compl., Ex. A at 2-3.)

2009 ¶ 5 n. 1.) and, based on their broad scope, informed Reynolds that the estimated fee required for it to begin to processing them would be $2,568.80 (Compl., Ex. J.). FOIA regulations permit the EOUSA to require payment of such a fee prior to processing the request. 28 C.F.R. § 16.11(i)(2). The EOUSA subsequently considered and rejected Reynolds" waiver request. (Compl., ex. M.)

Reynolds appealed the EOUSA's denial of his waiver request to the Office of Information Privacy ("OIP"), which affirmed that he did not qualify for a fee waiver because he failed to show how disclosure of the requested documents benefited the public interest as required by 28 C.F.R. § 16.11(k)(1)(i). Specifically, OIP found that the requested information was not likely to be meaningfully informative about government operations and that Reynolds thus failing to satisfy two of the four considerations that inform the agency whether to grant a fee waiver pursuant to 28 C.F.R. § 16.11(kX2). *(See* Compl., Ex. O at 1, Ex. P at 1-2.) Reynolds subsequently brought this action on January 15, 2009, challenging DOJ's compliance with FOIA.

II. STANDARDS OF REVIEW

The government moves to dismiss the complaint pursuant to either Federal Rule of Civil Procedure 12(b)(l) for lack of subject matter jurisdiction or Rule 12(b)(6) for failure to state a claim on which relief can be granted, or alternatively, for summary judgment. On a motion to dismiss a complaint for lack of subject matter jurisdiction, *Sharkey v. Quarantilla,* 541 F.3d 75, 82 (2d Cir. 2008) (quoting *Lujan v. Defenders of*

Wildlife, 504 U.S. *555, 561* (1992)).
While the Court must accept as true all material facts alleged in the complaint, in resolving challenges to subject matter jurisdiction, the Court may look beyond the pleadings in order to satisfy itself that it has the authority to hear the action. *See Filetech S.A. v. Fr. Telecom S.A.,* 157 F 3d 922,932 (2d Cir 1998).

Summary judgment is appropriate only if the evidence shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, (1986). In determining whether a genuine issue of material fact exists, the Court "is to resolve all ambiguities and draw all permissible factual inferences in favor of the party against whom summary judgment is sought." *Patterson v. County of Oneida,* 375 F.3d 206, 219 (2d Cir. 2004).

III. ANALYSIS

Federal district courts have jurisdiction pursuant to FOIA "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). Thus, the U.S. Supreme Court has 'found that "federal jurisdiction is dependent on a showing that an agency has (1) 'improperly' (2) 'withheld' (3) 'agency records.'" *U.S. Dep't of Justice v. Tax Analysts,* 492 U.S. 136, 142 (1989) (quoting *Kissinger v. Reporters Comm. for Freedom of Press,* 445 U.S. 136, 150 (1980)). However, courts in this district often prefer to resolve FOIA actions pursuant to Rule 56. *See. e.g., AP v. U.S. Dep't of Justice,* No, 06 Civ. 1758, 2007

U.S. Dist. LEXIS 18443, *89 (S D N Y March 7, 2007), *Jones-Edwards v. Appeal Bd. of Nat Security Agency*, 352 F Supp 2d420, 423 (S.D.N.Y. 2005).

This Court need not resolve this jurisdictional question, and instead finds that the government is entitled to judgment as a matter of law. *See Fama v Comm'r of Corr. Servs.*, 235 F.3d 804, 816 n. 11 (2d Cir. 2000) (assuming jurisdiction and reaching the merits where the jurisdictional issue was statutory, not constitutional); *see also Steel Co. v. Citizens for a Better Envt.*, 523 U.S. 83, 89-90 (1998) (finding it unreasonable to make all elements of a cause of action jurisdictional). FOIA requires agencies to charge those seeking substantial volume of information for the cost of processing their requests unless they qualify for a fee waiver. *See* 28 C.F.R. § 16.11(a); 5 U.S.C. § 552(a) (4)(A). Reynolds did not pay the estimated fee for his request and sought a waiver "in the public interest," which the EOUSA properly denied. (Compl., Ex. A at 4.)

To qualify for a fee waiver pursuant to FOIA, the requesting party must show that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Here, Reynolds provided no explanation of how the information sought might contribute to the public's understanding of governmental activities "[M]erely quoting the statutory language does not satisfy the first prong of the test," and so Reynolds has failed

to make the requisite showing *Sloman v. U.S. Dept. of Justice*, 832 F. Supp. 63, 68 (S D N Y 1993). The EOUSA thus was correct in finding that Reynolds did not qualify for a fee waiver pursuant to FOIA and refusing to process his request without payment. The Court accordingly grants the government's motion for summary judgment and dismisses Reynolds' complaint with prejudice.

Finally, the Court notes two additional and independent grounds for dismissing Reynolds' complaint. First, despite notice that failure to respond to the government's pending motion could result in dismissal of his complaint, Reynolds has failed to oppose or otherwise respond in any way. *See Rosado v. Bank of N.Y.*, No. 99 Civ. 10684, 2000 U.S. Dist. LEXIS 14261, at *2 (S.D.N.Y. Oct 2, 2000). Second, Reynolds' complaint is frivolous and based on allegations that are implausible and appear to lack any connection to reality *See* 28 U S C § 1915(e)(2); *see also Neitzke v. Williams*, 490 U.S. 319, 327 (1989) ("[28 U.S.C. § 1915] accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless . . . [including] claims describing fantastic or delusional scenarios."); *Jones-Edwards*, 352 F. Supp. 2d at 422 (dismissing amended complaint in FOIA challenge for frivolity of the underlying request pursuant to 28 U.S.C. § 1915(e)(2)).

IV. CONCLUSION

The Court finds that—even assuming that it has jurisdiction to consider Reynolds' complaint—the

government is nonetheless entitled to judgment as a matter of law because the EOUSA correctly determined that Reynolds did not qualify for a waiver of the required fee and thus must pay the assessed fee before it processed his FOIA request. Accordingly, the government's motion for summary judgment is granted and the Clerk of Court is directed to enter judgment dismissing the complaint.

Dated: New York, New York
July 7, 2009

SO ORDERED
"s/Sidney H. Stein"
Sidney H. Stein, U.S.D.J.

Appendix V: District Court Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES J. REYNOLDS, Stamp: U.S. District Court
Plaintiff, 09 CIVIL 0434 (SHS) Filed July 9, 2009
-against- JUDGMENT S.D. of N.Y.
THE ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA,
Defendant. SCANNED

The Government having moved to dismiss and, in the alternative, for summary judgment in its favor, and the matter having come before the Honorable Sidney H. Stein, United States District Judge, and the Court, on July 7, 2009, having rendered its Memorandum Opinion and Order granting the Government's motion for summary judgment, and dismissing the complaint, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Memorandum Opinion and Order dated July 7, 2009, the Government's motion for summary judgment is granted, and the complaint is dismissed.

Dated: New York, New York
July 9, 2009
J. MICHAEL McMAHON
Clerk of Court
BY:
"s/illegible"
Deputy Clerk
THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 7/9/09

Appendix W: District Court Order Denying Reynolds' Motion to Reconsider

UNITED STATES DISTRICT COURT Stamp:
SOUTHERN DISTRICT OF NEW YORK USDCSDNY
JAMES J. REYNOLDS DOCUMENT
Plaintiff, 09 Civ. 0434 (SHS) ELECTRONICALLY FILED
-against- DOC #: _____
THE ATTORNEY GENERAL OF THE, DATE FILED:
UNITED STATES OF AMERICA, 7/17/09
Defendant. ORDER
SIDNEY H. STEIN, U.S. District Judge.

James J. Reynolds, proceeding pro se, brings this action challenging the decision by the U.S. Department of Justice not to provide information that he requested pursuant to the Freedom of Information Act, 5 U.S.C. § 552. In April 2009, the government moved to dismiss the complaint, or, in the alternative, for summary judgment in its favor. Reynolds did not oppose or otherwise respond to the government's motion, despite notice that failure to do so could result in dismissal of his complaint, and the Court granted the government summary judgment in an order dated July 7, 2009. Reynolds now moves for reconsideration of the Court's July 7, 2009 order pursuant to Federal Rule of Civil Procedure 59(e). Because Reynolds has not demonstrated that the Court overlooked either facts or controlling legal authority that might alter its decision, his motion is denied.

To prevail on a motion for reconsideration, the movant must demonstrate that a court overlooked factual matters or controlling decisions "that might reasonably be expected to alter the conclusion reached." *Wechsler* v. *Hunt Health Sys., Ltd.*, 285 F.

Supp. 2d 343, 346 ?S.D.N.Y. 2003) (quotation omitted); *see also Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995). A party may not seize upon the motion for reconsideration as an opportunity to "advance new facts, issues or arguments not previously presented to the court." *Abrahamson v. Bd. of Educ. of Wappingers Cent. School Dist.*, 237 F. Supp. 2d 507, 510 (S.D.N.Y. 2002) (internal quotations omitted). Moreover, because a motion for reconsideration "is not a substitute for appeal," *Morales v. Quintiles Transnational Corp.*, 25 F. Supp. 2d 369, 372 S.D.N.Y. 1998) (citations omitted), the legal standard "must be narrowly construed and strictly applied so as to dissuade repetitive arguments on issues that have been considered fully by the court," *Hoffenberg v. Hoffman & Pollok*, 296 F. Supp. 2d *504, 505* (S.D.N.Y. 2003) (quotation and citation omitted).

Here, Reynolds proffers neither facts nor controlling decisions that alter the Court's prior conclusion. Indeed, Reynolds merely restates allegations contained in the complaint and considered in the context of the government's motion to dismiss or for summary judgment,[14] and he cites no controlling legal authority.

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[14] Even if the Court construed as new Reynolds' arguments on reconsideration and in support of his allegation that the Department of Justice's searches pursuant to his requests were inadequate (Mem. in Support of Mot. to Reconsider ¶ 3), the Court would decline to consider such contentions. *See Abrahamson*, 237 F. Supp. 2d at 510 (parties may not "advance new facts, issues or arguments" for the first time on a motion to reconsider).

Accordingly, Reynolds' motion for reconsideration is denied.

Dated: New York, New York
July 16, 2009

SO ORDERED
"s/Sidney H. Stein"
Sidney Stein, U.S.D.J.

Appendix X: Plaintiff's Motion to Reconsider

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
James J. Reynolds
820 Edison Ave
Bronx, NY 10465, No. 09 Civ. 0434 (SHS) (JCF)
Plaintiff,
vs.
The Attorney General of the United States of America
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001,
Defendant.

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO RECONSIDER THE MEMORANDUM OPINION AND ORDER PURSUANT TO RULE 59 (e) FEDERAL RULES OF CIVIL PROCEDURE

1. The January 15, 2009 complaint sought "judicial review to reverse" (1) the denial of "Freedom of Information/Privacy Act (FOIA/PA)" requests, and (2) FOIA "fee waiver denials by the Executive Office for United States Attorneys (EOUSA) of the United States Department Justice (USDOJ), upheld on administrative appeal by the USDOJ Office of Information and Privacy (OIP). 5 U.S.C. § 552(a)(4)(B)." Complaint (Compl.), 1. The complaint further asked this Court to:
    a. This court enjoin government agencies from withholding the requested records and order the production to the complainant (at no financial cost to the plaintiff) of any

> and all agency records withheld from him and assess against the United States litigation costs incurred by the complainant or, in the alternative, certify unambiguously that, after a diligent search, no responsive records can be found.
>
> i. To the extent that the US government might contain records pertaining to my request that would otherwise be responsive to my request, except for some sort of court order emanating from: (1) an Article III court; (2) a military court, commission, or other judicial body provided for in 10 U.S.C. or some other statute; or (3) a secret court (star chamber) in the legislative branch, this court would lift any such court order. Compl. ¶ 11.[15]

In a Memorandum Opinion and Order (Order), dated July 7, 2009, United States District Judge (USDJ) Sidney H. Stein granted the defendant's motion to dismiss the complaint, holding the fee waiver denial to have been correct and stating that the claim was frivolous without addressing the agency denial of FOIA/PA requests.

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[15] Implied in this are any executive orders.

FEE WAIVER DENIAL

2. Judge Stein granted the defendant's motion to dismiss the complaint because (1) "Reynolds provided no explanation or substantiation as to why a waiver of the fee was 'in the public interest,'" Order, 2, and (2) "Reynolds had not demonstrated the intent and ability to disseminate the information to the general public, thus failing to satisfy two of the four considerations that inform the agency whether to grant a fee waiver pursuant to 28 C.F.R. § 16.11(k)(2)." Id., 3.
    a. All four of the considerations informing the agency whether to grant a fee waiver pursuant to 28 C.F.R. § 16.11(k)(2) were met in the complaint:
        10. Regarding my ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities, I have both. As a Ph.D. student in US history in the Graduate School of Arts and Sciences at Fordham University, I am very interested in US constitutional history and, I would argue, a lot more familiar with the topic than most.
            a. Since "I contend that the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against me," see the Declaration of James

Reynolds (Reynolds Dec.) ¶ 3; Ex. Q , in my FOIA request, I sought any records that may exist that might answer the question: "Did any members of Congress or their staffs — either committee or member staffers — ask this US Attorney's office to assist the Congress in legislative efforts to execute that or any other bill of attainder against me and, if so, did anybody in this office take any actions in response?" Ex. A, 3.

i. To the extent that anybody in Congress may have sought help with executing a bill of attainder, it would appear to concern two constitutional issues: (1) the prohibition against bills of attainder, U.S. Const. art. I § 9: and (2) the provision vesting the power of the executive in the

"President of the United States of America." U.S. Const. art. II § 1.

ii. Can there be a better reason to grant a fee waiver than to support an effort to let the American public know if significant portions of their Constitution have been effectively scrapped? Any records indicating this to be the case would certainly provide excellent evidence on which to develop a scholarly article for publication in the short term and a book length study in the long term. This, in turn, could open opportunities to present any findings at conferences, which I would try to take full advantage of. Compl., ¶ 10 a.

b. Thus, there was both an explanation in the complaint for why the fee waiver was in the public interest and a demonstration of the ability and intent to disseminate the information. Id; see also see also *Judicial Watch, Inc. v. Dep't of Justice*, 122 F.Supp.2d 5, 8-11 (D.D.C.2000).

ADEQUACY OF THE SEARCH FOR RECORDS

3. The complaint also calls into question the adequacy of the search by the EOUSA, Compl. ¶ 10. c, and

> [I]n claims where the adequacy of a search is at issue, '[to merit summary judgment ... an 'agency must demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.' " *Dinsio v. Fed. Bureau of Investigation*, No. 05 Civ. 6159L, 2007 U.S. Dist. LEXIS 60269, at *3 (W.D.N.Y. Aug. 16, 2007) *(quoting* Students Against Genocide v. Dep't of State, 257 F.3d 828, 838 (D.C.Cir.2001). "In response to a challenge to the adequacy of its search, the agency may provide a 'reasonably detailed affidavit, setting forth the search terms and type of search performed, and averring that all files likely to contain responsive materials ... were searched.' *Smith v. Fed. Bureau of Investigation*, 448 F. Supp. 2d 216,220-21 (D.D.C.2006) (citing Oglesby v.

United States Dep't of Army, 920 F.2d 57. 68 (D.C.Cir. 1990)); *Hadden v. Bureau of Prisons* 2008 WL 5429823 (S.D.N.Y)

a. The defendant has not met this standard.
b. While Ms. Galli McLeod's did assert that "by letter dated January 10, 2008, [actually, the resent letter dated December 21, 2007] EOUSA informed you that it had concluded its initial two-hour search without cost to you for responsive records." Compl. Ex. P; id. Ex. J; Defendant's Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 (Def. 56.1 St.) ¶ 27, that letter is not a "reasonably detailed affidavit, setting forth the search terms and type of search performed, and averring that all files likely to contain responsive materials ... were searched." The letter was ambiguous and said only two things concerning records searches: (1) "We are currently searching for references in our case management database for information responsive to your FOIA/PA request (for records on yourself)."; and (2) "Finally, keeping in mind the first two hours were free, you may direct that we terminate your search."
c. Nor is there any mention by the defendant of whether any search, if one took place, uncovered records responsive to the FOIA/PA request, and EOUSA certainly did not release any

records it may have found which, since the December 7, 2007 Letter says the first two hours and first 100 pages are free, Compl. Ex. H, would have been free of charge and may have satisfied the initial request, thereby obviating the need for any further search or payment.

d. Moreover, since EOUSA only dealt with 74 of the plaintiff's 93 requests, Declaration of Dione J. Stearns dated April 24, 2009 ¶ 5 n. 1., 19 of them are unaccounted for. Therefore, they constitute FOIA/PA request denials for which the plaintiff seeks judicial review now.

    i. To the extent any of those 19 or other US Attorneys conducted searches for records independent of the EOUSA, they should inform the plaintiff of the results.

    ii. Additionally, the first two hours and 100 pages of any records that may have resulted from any such searches should be provided to the plaintiff free of charge, being handled in accordance with Privacy Act standards. Compl. Ex. H.

    iii. Thus, requesting money to do a search in excess of the first two hours without meeting the standard for demonstrating "beyond material doubt that its search was reasonably calculated to uncover all relevant

documents," *Dinsio v. Fed. Bureau of Investigation*, No. 05 Civ. 6159L, 2007 U.S. Dist. LEXIS 60269, at *3 (W.D.N.Y. Aug. 16, 2007) *(quoting* Students Against Genocide v. Dep't of State, 257 F.3d 828, 838 (D.C.Cir.2001), assuming one occurred, is putting the cart before the horse, since the original searches may have uncovered records that satisfied the FOIA/PA requests.

FRIVOLOUS COMPLAINT

4. It is not clear how to respond properly to what comes across as essentially name calling.
    a. The Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against me. See the Declaration of James Reynolds (Reynolds Dec.) ¶ 3; Ex. Q.
    b. Kaoru is a name given to Japanese males.[16]
5. WHEREFORE, plaintiff respectfully prays that:
    a. This Court reconsider pursuant to Fed R. Civ. P. 59 (e) the MEMORANDUM OPINION AND ORDER dated July 7, 2009 and deny the defendant's motion for summary judgment and rule in favor of the plaintiff on all matters, instead, as well as provide such other relief as the Court deems just and proper.
    b. This court enjoin government agencies from withholding the requested records

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[16] Gary D. Allinson, *The Columbia Guide to Modern Japanese History* (New York: Columbia University Press, 1999), 132-133.

and order the production to the complainant (at no financial cost to the plaintiff) of any and all agency records withheld from him and assess against the United States litigation costs incurred by the complainant or, in the alternative, certify unambiguously that, after a diligent search, no responsive records can be found.

c. To the extent that the US government might contain records pertaining to my request that would otherwise be responsive to my request, except for some sort of order emanating from: (1) an Article III court; (2) a military court, commission, or other judicial body provided for in 10 U.S.C. or some other statute; (3) a secret court (star chamber) in the legislative branch; or (4) Executive Orders, this court would lift any such order(s) and direct the EOUSA/ US Attorneys to release any such records.

Dated this 14th day of July, 2009

By: "s/James Reynolds"
James J. Reynolds
Pro Se
820 Edison Ave. Bronx, NY 10465

Appendix Y: Appellant's Brief

JURISDICTIONAL STATEMENT

The district court had original jurisdiction over the appellant's suit because it arose under FOIA. *See* 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1331; Reynolds's Complaint (Compl.), 1; app., 1a. Since the appeal stems from a final judgment of the district court dismissing the complaint, Judgment; app., 11a, this Court has jurisdiction pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

Whether the district court correctly granted summary judgment to the United States and dismissed the complaint, where the EOUSA has not averred that it has even conducted a search for records in response to Reynolds's FOIA requests, wherein the first two hours and first 100 pages of records would have been cost free to him.

Whether the district court correctly granted summary judgment to the United States and dismissed the complaint, where the EOUSA has not averred to demonstrate beyond material doubt that any search it may have conducted in response to Reynolds's FOIA requests was reasonably calculated to uncover all relevant documents.

Whether the district court correctly granted summary judgment to the United States and dismissed the complaint, where the EOUSA may have conducted a search for and found records, wherein the first two hours and first 100 pages of records ought to have been free but, nonetheless, failed to provide them to the appellant.

Whether Reynolds is entitled to a fee waiver.

STATEMENT OF THE CASE

A. The FOIA Requests and the Adequacy of Agency Searches

1. By letter dated February 19, 2007, I submitted a FOIA request to approximately 93 US Attorneys' offices (what I believed to be all of them). There were three different requests. The content of the request sent to the four US Attorneys in Florida was different from the one sent to the US Attorney in Massachusetts, which was different from that sent to the other approximately 88 US Attorneys. Compl., Ex. A; app., 13a-21a. By about April 2008 I had received approximately 57 replies that mostly said that the proper place to make the FOIA request was to the EOUSA, and that they would forward my requests there; a few, however, responded differently. Compl., Ex. B. On or about the 22nd day of April, 2007, I faxed a copy of the requests to the EOUSA, Compl., Ex. A; app., 12a -21a, and received by letter dated June 11, 2007 a denial, which assigned my request the number 7-707. *See* Compl., Ex. C; app., 22a. Administrative appeals continued over much of the next year and a half. None of the replies averred that either (1) anybody in the respective office conducted a search for records, or (2) any such search, if one occurred, was reasonably calculated to uncover all relevant documents, or (3) a search took place but produced no responsive records.

Janice Galli McLeod, Associate Director of the USDOJ Office of Information and Privacy (OIP) did, however, assert by letter dated December 9, 2008 that "by letter dated January 10, 2008, EOUSA informed you that it had concluded its initial two-hour search without cost to you for responsive records." Compl. Ex. P, Ex. J; Defendant's Statement of Undisputed Material Facts Pursuant to Local Civil Rule 56.1 (Def. 56.1 St.) ¶ 27; app., 23a-26a. The EOUSA letter, Compl. Ex. J; app., 26a, while it may have been designed to give that impression, did not clearly state that anybody in the EOUSA concluded the first two free hours of search. Nor was it an affidavit containing details about the search and its likelihood of uncovering the requested records. Moreover, there is no mention of whether any search, if one took place, uncovered records responsive to the FOIA/PA request and Reynolds has not received any records. Since the December 7, 2007 letter says the first two hours and first 100 pages are free, Compl. Ex. H; app., 27a, any records discovered would have been free of charge and may have satisfied the initial request, thereby obviating the need for any further search or payment.

B. The FOIA Requests and The Fee Waiver Denial

All four of the considerations informing the agency whether to grant a fee waiver pursuant to 28 C.F.R. § 16.11(k)(2) were met in the complaint. Regarding the appellant's ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities, Reynolds is a graduate student in US history. He sought records, if they existed, of (1)

any members of Congress or their staffs seeking the assistance of US Attorneys in legislative efforts to execute the Omnibus Budget Reconciliation Act of 1981, a bill of attainder against Reynolds, or any other bill of attainder against him, and/or (2) anybody in any US Attorney's office having provided such support. *See* the Declaration of James Reynolds (Reynolds Decl.) ¶ 3; Compl., Ex. A, Ex Q; app., 14a, 16a. Such matters would concern the operations of government regarding the prohibition against bills of attainder, U.S. Const. art. I § 9, and the provision vesting the power of the executive in the "President of the United States of America." U.S. Const. art. II § 1. Is there any greater public interest than to know if significant portions of the US Constitution may have been effectively scrapped? Any records indicating this would provide excellent evidence on which to develop a scholarly article, or book length study, which could lead to presentations at conferences. *See* Compl., at ¶ 10 a; App. 5a-6a. Thus, there was both an explanation in the complaint for why the fee waiver was in the public interest and a demonstration of the ability and intent to disseminate the information. *Id*; see also see also *Judicial Watch, Inc. v. Dep't of Justice*, 122 F.Supp.2d 5, 8-11 (D.D.C.2000).

C. Frivolous Complaint

There was no intent to be sensational in either the FOIA requests or the complaint, and it was personally excruciating to address those matters. The photo referenced in the initial pleadings, Reynolds Decl., Ex B, was taken in April 1991, while Reynolds was on leave en route to his next duty

station in Korea. There he was directed to attend the Communication Security (COMSEC) Custodian Course, and the concern is that, since Kaoru is a male name, this photo may have been part of an effort to get a hook in him for blackmail purposes to compromise him into providing unauthorized access to cryptographic key material. During that tour of duty, he gave a sworn statement to federal law enforcement authorities complaining about the intelligence activities of a foreign government directed against the US regarding something different. This statement may have apparently unwittingly thwarted any effort there may have been to compromise him. That he may have been targeted for retaliation in (1) secret judicial proceedings, possibly to include legislative kangaroo courts, or (2) a lethal finding pursuant to 50 U.S.C. § 413b(a) for his statement is extraordinarily disturbing.[17] That when he was in

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[17] Other examples of indications that seem fantastic of indications that are strong enough to cross a threshold I do not know how to define but made it in the past acceptable to inquire about include: (1) John Doe #1, who worked at the morgue and was seen at a local bar while on duty wearing his work clothes with what looked like stains from corpse matter in the summer of 1980 timeframe; (2) John Doe #2 owned a funeral home with hearses; (3) the indication for which previous FOIA request sought records was that I may have been drugged and photographed next to a cadaver, which was transported from the morgue to who knows what location by John Does #1 in one of John Doe #2's hearses (so as to have an explanation for transporting a dead body) either as a prank or for potentially getting a hook in me for blackmail purposes by saying there is evidence of necrophilia; and (4) law enforcement authorities may have managed to get a cadaver dog(s) to

the Army at Fort Campbell, KY in 1997 there was a former crew member on Air Force One assigned to his section to an unauthorized slot made him curious, especially since former crew member had been in the same battalion Reynolds was in, during his 1991-1992 tour of duty in Korea.

D. Proceedings Below

Reynolds filed this action under FOIA on January 15, 2009, seeking "judicial review to reverse Freedom of Information Act (FOIA) [request] and fee waiver denials by the Executive Office for United States Attorneys (EOUSA) of the United States Department Justice (USDOJ), upheld on administrative appeal by the USDOJ Office of Information and Privacy (OIP)." Compl., 1; app., 1a. The word "request" was mistakenly omitted from the opening paragraph of the complaint. However, the body of the complaint makes abundantly clear Reynolds sought review of FOIA request denials as well as fee waiver denials. *See* Compl., ¶¶ 4, 5. b., 10. c. i.-iii., and 11. a.; app., 2a-4a, 8a-9a. The complaint also requested that any orders emanating from congress, the executive branch (military court, or commission), or the courts that cause otherwise responsive records to be unresponsive be lifted. *Id.*, ¶ 11. b.; app., 10a. Implied in this was a request to lift any executive orders, as well.

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the location and used the reaction of the dog(s) to justify conducting a homicide investigation and/or to obtain court orders. While these individual indications might seem fantastic, the larger threshold is whether the "big lie" technique was employed against me. If so, anything goes.

The Government responded on April 24, 2009 with a motion to dismiss the case for lack of subject matter jurisdiction, or in the alternative for summary judgment. The appellant did not respond to the motion to dismiss because of his misunderstanding of the statement that Rule 56 does not permit opposing summary judgment with the allegations in the complaint. Since there was no evidence except what was in the complaint, Reynolds interpreted this statement to mean that reproducing it in response to the motion would not do; there needed to be additional evidence.[18] By opinion and order dated July 7, 2009 United States District Judge (USDJ) Sidney H. Stein granted the defendant's motion to dismiss the complaint, holding the fee waiver denial to have been correct and stating that the claim was frivolous. He did not address the agency denial of FOIA/PA requests. App., 28a-33a.

Reynolds submitted a motion to reconsider on July 15, 2009, pointing out the judge did not address the adequacy of the EOUSA's search for records in the opinion. *See* Memorandum in Support of Motion to Reconsider (Mem. in Spt. of Mot. to Reconsider); app., 34a-39a. The memorandum reemphasized the failure by the EOUSA to (1) aver it had conducted an adequate search, (2) certify the results of any searches that

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[18] Whereas in a previous case, the appellant submitted new evidence – and probably mistakenly so, it would appear now – in response to a motion to dismiss; the absence of anything beside what was in the complaint in this instance, led to the apparently mistaken conclusion that the judge would have the record in front of him when deciding on the motion.

may have occurred, including by the US Attorneys, or (3) release any responsive records it may have located. It also explicitly requested the lifting of any executive orders. *See id.* By order dated July 17, 2009 Judge Stein denied the motion, claiming Reynolds did not address the inadequacy of the search in the complaint. Stein Order; app., 40a-41a. Reynolds timely appealed both the opinion and order and the order denying the motion. Docket Sheet; App., 41a. Appellant asks this court to reverse the lower court decision.

STATEMENT OF THE FACTS

Whereas Reynolds asserted in both the complaint and the motion to reconsider that the EOUSA did not aver that it had even conducted a search for records in response to Reynolds's FOIA requests, Compl., ¶ 10.c.; app., 8a-9a; Mem. in Spt. of Mot. to Reconsider, ¶ 3.; app., 36a-38a, Judge Stein ruled that "FOIA regulations permit the EOUSA to require payment of ... a fee prior to processing his request." *See* Stein Op., 2; app., 29a.

Whereas Reynolds questioned the adequacy of the search in both the complaint, *See* Compl., ¶¶ 4, 5. b., 10. c. i.-iii., and 11. a.; app., 2a-4a, 8a-9a., and the motion to reconsider, Mem. in Spt. of Mot. to Reconsider, ¶ 3.; app., 36a-38a, the lower court opinion did not address the adequacy of the search, Stein Op., 1-6; app., 28a-33a, and the order denying the motion to reconsider asserted the argument questioning the search's adequacy was a new one. *See* Order denying the Motion (Mot. Order), 2 at n. 1; app., 41a.

Whereas Reynolds demonstrated in both the complaint and motion to reconsider that he had the ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities, Compl., ¶¶ 10.a. and 10.b.; , Mem. in Spt. of Mot. to Reconsider, ¶ 2., the district court ruled he did not. *See* Stein Op., 4-5; app., 31a-32a.

ARGUMENT

A. Adequacy of the Search for Records

Assistant US Attorney Brandon Cowart did not address Reynolds's challenge to the adequacy of the search in his motion to dismiss, even though:

> [I]n claims where the adequacy of a search is at issue, '[to merit summary judgment ... an 'agency must demonstrate beyond material doubt that its search was reasonably calculated to uncover all relevant documents.' " *Dinsio v. Fed. Bureau of Investigation*, No. 05 Civ. 6159L, 2007 U.S. Dist. LEXIS 60269, at *3 (W.D.N.Y. Aug. 16, 2007) (quoting *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 838 (D.C.Cir.2001). "In response to a challenge to the adequacy of its search, the agency may provide a 'reasonably detailed affidavit, setting forth the search terms and type of search performed, and averring that all files likely to contain responsive materials ... were searched.' *Smith v. Fed. Bureau of Investigation*, 448 F. Supp. 2d 216, 220-21 (D.D.C.2006) (citing *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *Hadden v. Bureau of Prisons* 2008 WL 5429823 (S.D.N.Y)

While Dione Jackson Stearns submitted an affidavit in support of Cowart's motion, Declaration of Dione Jackson Stearns (Stearns Decl.); app., 46a-52a, aside from not demonstrating "beyond material doubt that its search was reasonably calculated to uncover all relevant documents," *Dinsio v. Fed. Bureau of*

Investigation, No. 05 Civ. 6159L, 2007 U.S. Dist. LEXIS 60269, at *3 (W.D.N.Y. Aug. 16, 2007) (quoting *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 838 (D.C.Cir.2001), the statement did not even demonstrate that anybody at the EOUSA conducted a search. Jackson Stearns merely says "EOUSA advised the Plaintiff by letter dated January 10, 2008 that the Case Management Staff had conducted a two hour search for records responsive to his request." *See* Stearns Decl. ¶ 22; app., 52a. At best, the January 10, 2008 memo (it was originally dated December 21, 2007) is ambiguous, leaving open the question of whether there was a search or not. *See* December 21, 2007 EUSA letter; app., 26a. The letter is certainly not a sworn statement. *Key v. Hynes*, 205 AD 2d 779, 781. Nor is there any mention of whether the first two hours of any search, uncovered records responsive to the FOIA/PA request. FOIL § 89 3. (a) ; *Bellamy v. New York City Police Dept.* (1 Dept. 2000) 272 A.D. 2d 120, 123; *DeFabritis v. McMahon* (3 Dept. 2003) 301 A.D. 2d 892; *Key v. Hynes*, 205 AD 2d 779, 781. According to the December 7, 2007 EOUSA Letter, app., 27a, the first two hours and first 100 pages would have been free of charge. Anything uncovered may have satisfied the initial request, thereby obviating the need for any further search or payment. There was insufficient development of the factual record below to know if a search took place. *See Scarborough v. Harvey*, D.D.C. 2007, 2007 WL 1721962." 5 U.S.C.A § 552a at n. 293.

B. Fee Waiver Denial

Judge Stein granted the government's motion to dismiss the complaint because Reynolds failed to satisfy two of the four considerations that inform the agency whether to grant a fee waiver pursuant to 28 C.F.R. § 16.11(k)(2)." Order, 2, *Id.*, 3. However, all four of the considerations informing the agency whether to grant a fee waiver were met in the complaint. As a graduate student in US history, Reynolds has the ability and intent to disseminate information in a way likely to enhance public understanding of government operations or activities. Since "the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against" Reynolds, Declaration of James Reynolds (Reynolds Decl.) ¶ 3; Compl., Ex. Q , the FOIA requests sought any records that might indicate "members of Congress or their staffs" sought the help of US Attorneys with "legislative efforts to execute that or any other bill of attainder against" Reynolds. Ex. A, 3. Legislative execution of a bill of attainder would concern (1) the prohibition against bills of attainder, U.S. Const. art. I § 9, and (2) the provision vesting the power of the executive in the "President of the United States of America." U.S. Const. art. II § 1. Can there be a better reason to grant a fee waiver than to support an effort to let the American public know if significant portions of their Constitution have been effectively scrapped? *See Judicial Watch, Inc. v. Dep't of Justice*, 122 F.Supp.2d 5, 8-11 (D.D.C.2000).

C. FRIVOLOUS COMPLAINT

It is not clear how to respond properly to what comes across as essentially name calling by Judge Stein, except to say the Omnibus Budget Reconciliation Act of 1981 was a bill of attainder against Reynolds, the Declaration of James Reynolds (Reynolds Dec.) ¶ 3; Ex. Q., and Kaoru is a name given to Japanese males.

CONCLUSION

WHEREFORE, appellant respectfully prays that this Court: (1) reverse the lower court's decision, (2) direct the EOUSA to aver unambiguously that it has conducted the requisite initial two-hour search for records, (3) direct the EOUSA to aver that after a diligent search, no responsive records can be found, if that be so (4) enjoin government agencies from withholding any responsive records, (5) direct the EOUSA to grant the fee waiver and continue the search past the initial two free hours and 100 pages, if the first search did not satisfy the FOIA request, (6) lift any orders emanating from any branch of government at the federal, state, or local level that cause otherwise responsive records to be unresponsive to Reynolds's FOIA requests, (7) to the extent that Reynolds petitioning the judicial branch of government is interpreted by any official of any branch of government at the federal, state, or local level in the United States as a terrorist act committed by somebody judged to be an enemy combatant engaging in "law fare," this court should declare void any such determination and make a finding that anybody making such determinations are domestic enemies of the US

Constitution, and (8) provide such other relief as the Court deems just and proper.

Dated this 8th day of February, 2010

By: "s/James Reynolds"
James J. Reynolds
Pro Se
820 Edison Ave.
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Appendix Z: Appellee's Brief

U.S. Department of Justice
United States Attorney
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June 8, 2010
By Hand Delivery and E-Mail
Catherine O'Hagan Wolfe
Clerk of the Court
United States Court of Appeals for the Second Circuit
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, 5th Floor
New York, New York 10007
Re: Reynolds v. The Attorney General of the United States, No. 09-3675-cv

This Office represents Defendant-Appellee the Attorney General of the United States (the "Government"). Pursuant to the Court's scheduling order dated December 22, 2009, the Government respectfully submits this memorandum in lieu of a brief. The Government also respectfully submits the Appendix for Defendant-Appellee, filed in accordance with the scheduling order and referred to hereafter as "DA_."

PRELIMINARY STATEMENT

In this action, *pro se* Plaintiff-Appellant James Reynolds alleges that he is the victim of a vast government conspiracy to clone a "promiscuous homosexual" version of him to be used in AIDS research, to trick him into associating with a "cross-dresser" for the purpose of defaming him, and to

enact punitive bills of attainder against him for reporting espionage activities in Korea. To uncover this purported conspiracy, Reynolds allegedly submitted broad requests for information under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to 93 U.S. Attorney's Offices, along with a request to waive all processing fees related to the requests. Following well-established agency regulations, the Department of Justice ("DOJ") refused to grant a fee waiver and required Reynolds to submit advance payment for his costly searches. Reynolds commenced the present action as a result.

The district court (Hon. Sidney H. Stein, J.) properly dismissed Reynolds' complaint, holding that the undisputed record demonstrates that Reynolds provided to the DOJ no support for his fee waiver request despite his burden to do so. Additionally, the district court properly exercised its inherent authority to dismiss the complaint as frivolous, as it is based on fantastic claims about the government's creating a sexually promiscuous doppelganger James Reynolds. Finally, the district court acted well within its discretion in denying Reynolds' motion for reconsideration. Reynolds, who did not oppose the Government's motion for summary judgment despite receiving due notice, raised no controlling decision or factual matter that had been overlooked by the district court with respect to the fee waiver issue. The district court did not abuse its discretion in declining to consider new arguments about the DOJ's search for documents, raised for the first time on reconsideration.

ISSUES PRESENTED FOR REVIEW

1. Whether the district court properly granted summary judgment upholding the DOJ's denial of Reynolds' fee waiver request, where Reynolds provided no basis to conclude that disclosure of the requested information was in the public interest, as required by FOIA.
2. Whether the district court properly dismissed the complaint as frivolous in light of Reynolds' fantastic allegations.
3. Whether the district court reasonably exercised its discretion in denying Reynolds' motion for reconsideration, where Reynolds did not raise any factual matter or legal precedent overlooked by the district court, but merely submitted new arguments.

STATEMENT OF FACTS

A. Reynolds' FOIA Requests

In February 2007, Reynolds allegedly sent letters to 93 U.S. Attorneys' Offices requesting records about himself. (DA 37). In these letters, Reynolds scattered requests for documents among allegations of a bizarre and extraordinarily far-fetched government conspiracy against him (described *infra* Point B). At bottom, Reynolds requested that the U.S. Attorneys' Offices conduct the "the most thorough search possible" to determine if they "ever received any information about [him]." (DA 51). If no records were located using his name, Reynolds demanded that the searches be broadened to include the aliases "J.R., Jimbo, Jimmy, Jim, D2, Chivas, Jimbone, T-bone, or any aliases with references to the Bronx." *(Id.)*. Reynolds requested any records whatsoever,

visual, acoustic or written, "whether the product of fakery or not." *(Id.)*.

A person requesting documents under FOIA ordinarily must pay the reasonable costs associated with searching for, reviewing, and copying the records sought absent a fee waiver. 5 U.S.C. § 552(4)(A)(ii)(I). In the last sentence of his letters, Reynolds requested "a fee waiver in the public interest" (DA 52), something FOIA allows when disclosure of the requested records is "likely to contribute significantly to public understanding of the operations or activities of the government" and "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). Reynolds provided the DOJ with no reason why his FOIA requests were likely to contribute to the public understanding of government operations or activities, or why a fee waiver was otherwise warranted, despite his burden to show entitlement to the fee waiver, *see Carney v. US. Dep't of Justice*, 19 F.3d 807, 814 (2d Cir. 1994). Though not material to this appeal, the DOJ's records evidence 74 requests, not 93 as alleged. (DA 30 n.1).

B. Background of Reynolds' FOIA Requests

Reynolds purportedly submitted the FOIA requests at issue to uncover an alleged vast government conspiracy to create a "virtual-reality version of [Reynolds] as a promiscuous homosexual" to be used in experiments involving transmission of the AIDS virus. (DA 50). The unidentified conspirators, Reynolds claims, have attempted "to make the version of [him] that exists in physical reality jive with the phony version of

[him] by drugging [him] and violating [him] with a foreign object or, maybe even a real homosexual." *(Id.)*. The alleged purposes of these efforts were: to infect Reynolds with the AIDS virus; "to disseminate the visual fakery depicting the virtual-reality version of [him] as a promiscuous homosexual to make it appear that [his] behavior was bound to result in [him] being infected with the [AIDS] virus"; to undermine Reynolds' authority with his unidentified "subordinates"; to create evidence for use in court proceedings against Reynolds; and "to defame [him] to visiting international officers." *(Id.)*.

This supposed plot against Reynolds extended to the United States Army and Congress. Reynolds, who claims to be a former major in the United States Army, alleges that the Pentagon embedded media organizations in the military units where Reynolds served to act as secret investigators to gather information about him, which they passed on to the United States Attorneys' Offices "to trigger an investigation of [him]." (DA 51). Congress, Reynolds alleges, passed the Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, 95 Stat. 357, as a bill of attainder against him in retaliation for Reynolds' reporting espionage activities he observed while stationed in Korea. *(Id.)*. (According to the complaint, Reynolds was in Korea in 1991 (DA 43), and the bill of attainder was passed in August of 1981.) Reynolds proffers a note and photograph of a Japanese woman he met in Hawaii whose first name in Japanese is a man's name, which, Reynolds claims, indicates that the woman was a

"cross-dresser." (DA 44). Reynolds alleges that his involvement with this woman is somehow related to the alleged enactment of a bill of attainder against him. *(Id.)*.

C. Reynolds' Administrative Appeal of EOUSA's Fee Determinations

Reynolds' requests for documents and a fee waiver were forwarded to the Executive Office for United States Attorneys ("EOUSA"). (DA 29). The EOUSA is the office within the Department of Justice responsible for keeping records and processing FOIA requests to U.S. Attorneys' Offices. (DA 28). The EOUSA notified Reynolds that it was processing his FOIA requests, but cautioned that requests such as his — asking for " all information about myself in criminal case files" — call for more involved searches typically requiring 9 months to complete. (DA 123). The EOUSA alerted Reynolds that, without a waiver of fees, he could be charged duplicating charges and search fees costing $28 per search hour. *(Id.)*. The EOUSA wrote that the fees could be reduced if Reynolds narrowed the requests. *(Id.)*.

Reynolds did not respond to the invitation to narrow his requests. Subsequently, the EOUSA advised Reynolds that, due to the breadth and scope of the requests, the estimated fee for processing Reynolds' requests was $2,568.80. (DA 126). The EOUSA required Reynolds to pay the estimated fee before continuing to process the requests, as permitted under 28 C.F.R. § 16.11(h)(2), and again advised Reynolds that the fee estimate could be reduced if he narrowed his requests. *(Id.)*. Shortly thereafter, the EOUSA denied the fee

waiver request because Reynolds failed to show how disclosure of the requested documents was in the public interest, as required by 28 C.F.R. § 16.1 1(k)(l)(i). (DA 133).

Reynolds timely appealed the EOUSA' s decisions to the DOJ' s Office of Information and Privacy ("OIP"). (DA 135). The OIP affirmed the EOUSA's fee estimate and denial of the fee waiver request, explaining that Reynolds did not satisfy two of the six factors identified in 28 C.F.R. § 16.11(k) as relevant to the analysis of a public interest fee waiver request — specifically, the second public interest factor (that the requested information is likely to be meaningfully informative about government operations) and the third public interest factor (that the requester has the ability and intent to disseminate the information to the general public). (DA 141).

D. Proceedings Below

On January 15, 2009, Reynolds commenced this action under FOIA, 5 U.S.C. § 552(a)(4)(B). For relief, Reynolds sought a court order directing the DOJ to produce all documents to him at no cost or to certify that it has no records. Reynolds also asked that the district court "lift" any secret order prohibiting disclosure of these records, whether from "an Article III court" or "a secret court (star chamber) in the legislative branch." (DA 46-47). In response to the complaint, the Government moved for dismissal under Rule 12(b)(1) and (6) or, in the alternative, for summary judgment under Rule 56. Because Reynolds was proceeding *pro Se*, the DOJ included in its motion papers the "Notice to *Pro Se* Litigant Who Opposes a Rule 12

Motion Supported by Matters Outside the Pleadings" and the "Notice to *Pro Se* Litigant Who Opposes a Motion for Summary Judgment," as required by Local civil Rules 12.1 and 56.2 of the Local Rules of the United States District courts for the Southern and Eastern Districts of New York. (DA 10-19). Reynolds did not respond despite admittedly being aware of the Government's motion. (Appellant's Brief ("App. Br.") at 5)•2

By Opinion and Order dated July 7, 2009, the district court granted the Government's motion for summary judgment, affirming the DOJ's decision that Reynolds did not qualify for a fee waiver. (DA 148-153). The district court determined that Reynolds had provided the DOJ with no reasons to support the fee waiver request. (DA 152). The district court also held that dismissal was warranted for two other reasons: one, Reynolds failed to oppose the DOJ's motion despite receiving notice that failure to do so could result in dismissal of the complaint (DA 152); and two, because the allegations contained in the complaint were "implausible" and "lack[ed] any connection to reality," the complaint was frivolous as a matter of law and subject to dismissal under the court's inherent authority. *(Id.)*.

Reynolds moved for reconsideration of this decision under Rule 5 9(e), citing alleged errors in the DOJ's fee waiver decision and search for records. (DA 155). Specifically, to show entitlement to a fee waiver, Reynolds copied portions of his complaint in which he baldly states that there is a public interest in the requested information about him and describes his alleged

credentials as a graduate student. (DA 156-57). Reynolds also raised new arguments about the[19] DOJ's purportedly inadequate search for responsive documents, assertions that were not raised by Reynolds at the administrative level. By Order dated July 16, 2009, the district court denied the reconsideration motion, finding that Reynolds was "merely restat[ing] allegations contained in the complaint and considered" by the court in its prior decision, instead of, as required by Rule 59(e), showing that the court had overlooked factual matter or controlling precedent that was presented in the underlying motion and that would have changed the decision. (DA 162-63). The court declined to consider Reynolds' complaints about the DOJ's search because a party may not raise new arguments in a motion for reconsideration. (DA 163 n. 1). This timely appeal followed. (DA 164).

ARGUMENT

THE DISTRICT COURT PROPERLY DISMISSED THIS ACTION

A. Standards of Review

This Court reviews *de novo* a district court's grant of summary judgment. *See Huminski v. Corsones*, 396 F.3d 53, 69 (2d Cir. 2005). Summary judgment is appropriate when "there is no genuine issue as to any material fact and. . . the movant is entitled to judgment as a matter of law." Fed. R.

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[19] 2 A certificate of Service attached to the Government's motion to dismiss indicates that the motion was served via overnight delivery to the same address for Reynolds listed on the docket sheets in this court and in the district court. (DA 147).

Civ. P. 56(c).3

Judicial review of an agency's denial of a fee waiver request under FOIA is *de novo*, but is limited to the record before the agency. *Carney*, 19 F.3d at 814. The agency record "consists of, *inter alia*, the initial FOIA request, the agency's response, and any subsequent materials related to the administrative appeal." *Jarvik v. CIA*, 495 F. Supp. 2d 67, 71 (D.D.C. 2007) (citation and quotation marks omitted).

This Court has not decided whether review of a district court's dismissal of a complaint as frivolous is *de novo*, like a grant of summary judgment, or for abuse of discretion. *See Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 364 n.2 (2d Cir. 2000). The Court need not decide the issue here, however, as the district court's judgment should be affirmed even under the more rigorous *de novo* standard. *See Lunney v. United States*, 319 F.3d 550, 554 (2d Cir. 2003).

Finally, this Court reviews orders denying reconsideration under Rule 59(e) for abuse of discretion. *Munafo v. Metropolitan Transp. Auth.*, 381 F.3d 99, 105 (2d Cir. 2004). Under this highly deferential standard, reversal is appropriate only if "there was no reasonable basis for [the district court's] decision." *In re Lancaster Factoring Co., Ltd.*, 90 F.3d 38, 42 (2d Cir. 1996) (internal quotation marks omitted).

Citing the preference among courts in the Southern District of New York to resolve FOIA actions pursuant to Rule 56, the district court did not consider the DOJ's motion concerning the denial of Reynold' s fee waiver as one for lack of

subject matter jurisdiction under Rule 1 2(b)(1). (DA 151). Because the analysis under Rules 56 and 1 2(b)(1) is the same, we do not discuss jurisdiction separately. *See US. Dep 't of Justice v. Tax Analysts,* 492 U.S. 136, 142 (1989); *Grand Cent. P 'ship, Inc. v. Cuomo,* 166 F.3d 473, 478 (2d Cir. 1999).

B. The District Court Properly Dismissed This Action Based on Reynolds' Failure to Pay Estimated Search and Copy Fees

FOIA authorizes federal courts to enjoin an "agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). To "withhold" documents means to refuse to give documents to the requester or to deny a valid request. *Tax Analysts,* 492 U.S. at *149-50.* To be valid, a request must comply with the agency's published FOIA regulations, 5 U.S.C. § 552(a)(3)(A), including agency requirements concerning the payment of fees, see 28 C.F.R. § 16.11(e), (i)(4) (both provisions stating that a request is "not considered received. . . until the requester" complies with requirements concerning fee payment).

In this case, Reynolds waived any argument that the DOJ improperly conditioned the processing of his FOIA requests on payment of estimated fees. He did not raise this issue in the district court (DA 37-47), and has not done so in his appellate brief, App. Br. at 7-9. *See First City, Texas-Houston, N.A. v. Rafidain Bank,* 281 F.3d 48, 52-53 (2d Cir. 2002) (declining to consider arguments raised for first time on appeal); *McCarthy v. S.E.C.,* 406 F.3d 179,

186 (2d Cir. 2005) (arguments not raised in appellant's opening brief, but only in reply brief, not properly before appellate court).

In any event, the district court correctly held that the DOJ properly denied Reynolds' fee waiver request. An agency must waive processing fees if disclosure of the requested information satisfies a two-part test: (i) "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government" (the "public interest" prong); and (ii) disclosure "is not primarily in the commercial interest of the requester" (the "commercial interest" prong). 5 U.S.C. § 552(a)(4)(A)(iii). The requester bears the burden of establishing entitlement to a fee waiver. *See Carney*, 19 F.3d at 814. At issue here is the public interest prong; it is not disputed that Reynolds satisfies the commercial interest prong. In analyzing the public interest prong, the DOJ considers four factors: (i) the subject of the request; (ii) the informative value of the information to be disclosed; (iii) the contribution to an understanding of the subject by the public likely to result from the disclosure; and (iv) the significance of the contribution to public understanding. 28 C.F.R. § 16.11(k)(2)(i)-(iv). In this case, the DOJ properly determined that Reynolds' fee waiver request did not satisfy the second and third public interest factors.

Second Public Interest Factor: Informative Value of Information. The burden rests with the requester to establish that the requested records are "likely to contribute" to the public understanding of

government operations or activities. 28 C.F.R. § 16.11(k)(2)(ii) (quotation marks omitted). Reynolds failed to satisfy this burden. To the EOUSA, he simply wrote, "I request a fee waiver in the public interest" (DA 52, 55, 57); and later, to the OIP, he reiterated this request and added that he could not afford to pay the estimated fee (DA 129). This plainly was inadequate.

First, it is well settled that "merely quoting the statutory language does not satisfy the [public interest] prong of the test." *Sloman v. US. Dep 't of Justice,* 832 F. Supp. 63, 68 (S.D.N.Y. 1993). Reynolds' single-sentence request failed to present "details specific to [the] FOIA request indicating how the information sought will contribute to an increased public understanding of government operations or activities[,]... supported by facts." *Judicial Watch v. US. Dep 't of Justice,* 185 F. Supp. 2d 54, 61 (D.D.C. 2002). *Second,* indigence, "without a showing of a public benefit, is not a valid basis for granting a fee waiver." *Harrington v. Dep 't of Justice,* No. 06-0254, 2007 WL 625853, at *4 (D.D.C. Feb 27, 2007) (collecting cases); *see also Rizzo v. Tyler,* 438 F. Supp. 895, 900-01 (S.D.N.Y. 1977) (requester's "indigent status does not *ipso facto* require the waiver of search fees").

The Third Public Interest Factor: Public Understanding.[20] Under this factor, "[t]he

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[20] The district court held that the second public interest factor was not satisfied and thus did not address the DOJ's additional argument that Reynolds did not satisfy the third public interest factor. This Court, however, may affirm the district court's judgment on any basis supported by the record. *See Adeleke v. United States,* 355 F.3d 144, 147 (2d Cir. 2004).

disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester." 28 C.F.R. § 16.11 (k)(2)(iii). While there is a presumption that a "member of the news media" meets this factor, other requesters such as Reynolds must substantiate their ability to disseminate information. *Id.* In assessing this factor, the DOJ considers the requester's "ability and intention to effectively convey" the requested information to the public. *Id.* In this case, the DOJ provided Reynolds with two reasons why the third factor was not satisfied, both of which were correct.

First, the DOJ correctly determined that Reynolds demonstrated neither intent nor ability to disseminate the requested information. (DA 142-46). To the DOJ, Reynolds provided no information regarding any plans to disseminate the requested records to the public, no description of his "expertise in the subject area," and no other indication of his intent or ability to distribute information. 28 C.F.R. § 16.1 1(k)(2)(iii). This absence of evidence, in itself, warrants affirmance of the DOJ's denial of a fee waiver. *See Sloman,* 832 F. Supp. at 67-68.

Reynolds improperly attempted to remedy this shortcoming after conclusion of the administrative process. In the complaint, he claims to be a graduate student of American history at Fordham University; he states that the requested information could be useful to someone writing a "scholarly article for publication. . . and a book-length

study," as well as of interest at unidentified future academic conferences devoted to Reynolds' bill of attainder concerns. (DA 42). But these assertions — not made by Reynolds as part of his fee waiver request to the DOJ — may not be considered by a reviewing court. *See Carney*, 19 F.3d at 814 (courts review an agency's fee waiver determination "only with reference to the record before the agency"). In any event, Reynolds' vague assertions about being a scholar are insufficient as a matter of law to justify a fee waiver. *See, e.g., Oglesby v. US. Dep 't of the Army*, 920 F.2d 57, 66 n. 11 (D.C. Cir. 1990) (finding insufficient requester's statement that "[t]he information requested is beneficial to the public interest[;] I am a writer and lecturer who has disseminated such information in the past, and I intend to do so in the future").

Second, the DOJ correctly determined that there was no public interest because the requested information would interest primarily Reynolds. *See* 28 C.F.R. § 16.11 (k)(2)(iii) (disclosure must contribute "to the understanding of a reasonably broad audience" and not just "the individual understanding of the requester"). Reynolds' FOIA requests sought information solely pertaining to himself. (DA 141, 144). Reynolds provided no reasons — either to the DOJ, the district court, or this Court — why these records would interest anyone other than himself. *See Klein v. Toupin*, No. 05-0647, 2006 WL 1442611, at *4 (D.D.C. May 24, 2006) (third public interest factor not satisfied because requester "did not present any evidence or make any argument that the requested

information would benefit anyone other than himself'). Reynolds alleges in the complaint that there is a public interest in "let[ting] the American public know [about] significant portions of their Constitution [being] effectively scrapped" due to the alleged bill of attainder against him. (DA 43). But this Court has rejected such claims where requesters seek records for apparently personal reasons. *See, e.g., Carney,* 19 F.3d at 816 ("We suspect that Carney requested these records in preparation for litigation with the DOJ over his FOIA requests, in which case a fee waiver is inappropriate."). The district court thus properly dismissed the complaint based on Reynolds' failure to pay the estimated search and copy fees.

C. The District Court Properly Dismissed the Complaint as Frivolous

An action is subject to dismissal if it is "based on an indisputably meritless legal theory" or if its "factual contentions are clearly baseless." *Neitzke v. Williams,* 490 U.S. 319, 327 (1989). "Examples of the latter class are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." *Id.* at 328. Thus, "a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton v. Hernandez,* 504 U.S. 25, 33 (1992); *Tyler v. Carter,* 151 F.R.D. 537, 540 (S.D.N.Y. 1993), *aff'd mem.,* 41 F.3d 1500 (2d Cir. 1994) (complaint alleging that plaintiff was a "cyborg," who "received most of the information which forms the basis for her complaint" through

"proteus," dismissed as "fantastic or delusional" on authority of *Neitzke*). Courts do not hesitate to dismiss complaints asserting delusional claims of conspiracy, even where (as here) the plaintiff has paid the filing fee. *See Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (Court of Appeals "has inherent authority. . . to dismiss an appeal or petition for review as frivolous when the appeal or petition presents no arguably meritorious issue for our consideration"); *Gallop v. Cheney*, No. 08-10881, 2010 WL 909203, at *5 (S.D.N.Y. Mar. 15, 2010) (dismissing as "fanciful, fantastic, or delusional" represented party's complaint alleging that high-ranking federal officials conspired to facilitate terrorist attacks of September 11, 2001) (collecting cases).

Reynolds' FOIA requests — for documents relating to, among other things, the creation of a cloned James Reynolds for use in AIDS experiments — plainly meet the standard for frivolousness. (*See* DA 50, 53). Simply because this action is brought under FOIA does not insulate the complaint from dismissal on this ground. *See, e.g., Glasser v. CIA*, No. 02-5420, 2003 WL 21209705, at *2 (N.D. Cal. May 15, 2003) (dismissing FOIA complaint because plaintiffs "fantastical allegations of the CIA's 'mind control' . . . are too implausible to be credible"); *Peck v. Merletti*, 64 F. Supp. 2d 599, 602 (E.D. Va. 1999) ("[o]ther courts have dismissed similar actions against federal agencies where the plaintiff has alleged improper response to FOIA requests where the action is frivolous and without a basis in law"). The district court thus properly dismissed Reynolds' complaint as frivolous.

D. The District Court Did Not Abuse Its Discretion in Denying

Reynolds' Motion for Reconsideration

The standard for reconsideration is "strict, and reconsideration will generally be denied." *Shrader v. CSX Transp., Inc.*, 70 F.3d *255, 257* (2d Cir. *1995)*. A motion for reconsideration is appropriate only when "the moving party can point to controlling decisions or data that the [district] court overlooked — matters, in other words, that might reasonably be expected to alter the conclusion reached by the court." *In re BDC 56LLC*, 330 F.3d 111, 123 (2d Cir. 2003) (quoting *Shrader*, 70 F.3d at *257)*.

The district court acted well within its discretionary authority in denying Reynolds' motion for reconsideration. In the motion, Reynolds argued that he warranted a fee waiver by copying, verbatim, allegations from his complaint about his alleged ability to disseminate information and about the public interest. (DA 156-57). But the district court granted the DOJ's motion because Reynolds failed to provide the DOJ with any reasons to support the fee waiver application, including Reynolds' supposed ability to disseminate the requested information: "Here, Reynolds provided no explanation of how the information sought might contribute to the public's understanding of governmental activities," and thus the DOJ "was correct in finding that Reynolds did not qualify for a fee waiver." (DA 152, 153). Reynolds' argument for reconsideration, which simply repeated allegations from the complaint about matters not presented to the

DOJ during the administrative review process, did not identify any factual or legal matter that the district court overlooked in deciding the summary judgment motion.[21]

The district court also acted within its discretion in declining to consider new arguments raised by Reynolds about the adequacy of the DOJ's search. (DA 163 n. 1). Under FOIA, the first two hours of search time and the first 100 pages of duplication are provided without cost to a non-commercial requester such as Reynolds. 5 U.S.C. § 552(a)(4)(A)(iv)(II). The EOUSA here performed two hours of search for any reference to Reynolds in its database. (DA 126). In his reconsideration motion, Reynolds asserted that the manner and method of the DOJ's search for the two free hours was inadequate; that the DOJ should have informed him in a declaration whether responsive documents were found; and that if any documents were found, the first 100 pages should have been provided to him. (DA *157-58*). Reynolds did not raise these arguments, however, during the administrative process or in response to the Government's motion to dismiss, but raised them for the first time in the motion for reconsideration. The district court accordingly did not abuse its discretion in declining to consider them. *See Koury v. Xcellence, Inc.*, 649 F. Supp. 2d 127, 140-41 (S.D.N.Y. 2009) (a "motion for reconsideration is not

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[21] In any event, Reynolds' bald assertions lifted from the complaint are insufficient to warrant a fee waiver. A request for a fee waiver "must be made with reasonably specificity. . . and based on more than conclusory allegations." *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

an opportunity for making new arguments that could have been previously advanced") (internal quotation marks omitted).

Had Reynolds raised these issues in opposing the Government's motion, moreover, the DOJ would have supplemented the record in several ways. In its supporting declaration, the DOJ would have demonstrated that Reynolds did not object to the adequacy of its search with the agency, and he therefore was barred from raising it before the district court. *See Hidalgo v. FBI*, 344 F.3d 1256, 1260 (D.C. Cir. 2003) (failure to exhaust administrative remedies bars judicial review); *NY. Times v. US. Dep 't of Labor*, 340 F. Supp. 2d 394, 398 (S.D.N.Y. 2004) (same). The DOJ also would have demonstrated that, after cautioning Reynolds that his requests were broad, the EOUSA asked Reynolds to indicate how it should proceed with his requests — by providing the results, if any, of the first two hours of search time and the first 100 pages of documents, or by narrowing the searches to reduce processing fees. (DA 123-24). And the DOJ would have demonstrated that, after the EOUSA notified Reynolds that further processing of his request was conditioned on receiving advance payment of the estimated fees (DA 126), the EOUSA again asked Reynolds (in a document not submitted with the Government's motion) how it should proceed with his FOIA requests. Because Reynolds did not make these arguments in response to the Government's motion, the Government did not have occasion to rebut them fully in the record.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted,

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Appendix AA: Appellant's Petition for a Panel Rehearing and/or a Rehearing *En Banc*

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

James J. Reynolds 09-03675-cv PETITION FOR A
Plaintiff- Appellant, PANEL REHEARING
vs. AND/OR FOR A
The Attorney General of the REHEARING EN BANC
United States of America TO THE UNITED STATES
Defendant– Appellee. COURT OF APPEALS FOR
THE SECOND CIRCUIT

PRELIMINARY STATEMENT

The panel decision in this appeal conflicts with the equal protection component of the Fifth Amendment's due process clause, U.S. Const. Amend. V, and decisions of the United States (US) Supreme Court, *Adarand Constructors, Inc. v. Pena, Secretary of Transportation, et al* - 515 U.S. 200 (1995); *Buckley v. Valeo*, 424 U. S. 1 (1976); it also conflicts with decisions of the United States Court of Appeals for the Second Circuit, *Miller v. Wolpoff & Abramson, L.L.P* 321 F3d 292, 300 (2nd Cir. 2003); *Patterson v. County of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004); *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005), 350, 355; and *Shrader v.CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995); and finally, it conflicts with authoritative decisions of the United States Courts of Appeals for the District of Columbia and Tenth Circuits, respectively. *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 61, 66 (D.C. Cir. 1990); and *Nichols v. U.S.* C.A. 10 (N.M.) 1986, 796 F.2d

361. Reconsideration by the panel and/or consideration by the full court is therefore necessary to secure compliance with the constitution and laws of the US as well as to maintain uniformity within this Court and among the US Circuit Courts of Appeals.

ISSUES PRESENTED FOR REHEARING

Whether the panel of this Court correctly affirmed the district court's granting of summary judgment to the defendant and dismissed the complaint when the plaintiff presented facts in the complaint that would entitle him to relief, thereby defeating the defendant's motion.

Whether the plaintiff exhausted administrative remedies pertaining to the Freedom of Information Act (FOIA) request denials before filing suit in federal court.[22]

Whether the plaintiff should be required to exhaust administrative remedies twice pertaining to the FOIA request denials by the Executive Office for United States Attorneys (EOUSA) and Office of the Inspector General (OIG) in the United States Department of Justice (USDOJ) in addition to doing so once each for the fee assessment and fee-waiver denial by the EOUSA, respectively, before filing suit in federal court.

Whether the district court correctly granted summary judgment to the defendant and dismissed the complaint, where neither the EOUSA nor the OIG met their requirement to aver that they have conducted a search for records in response to Reynolds's FOIA requests.

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[22] Reynolds submitted FOIA requests to 93 United States Attorneys.

Whether the district court correctly granted summary judgment to the defendant and dismissed the complaint, where neither the EOUSA nor the OIG have met the requirement to demonstrate beyond material doubt that any search they may have conducted in response to Reynolds's FOIA requests was reasonably calculated to uncover all relevant documents.
Whether the district court correctly granted summary judgment to the defendant and dismissed the complaint, where either the EOUSA or the OIG may have conducted a search for and found records, wherein the first two hours and first 100 pages of records would have been free but, nonetheless, failed to provide them to the appellant.
Whether Reynolds is entitled to a fee waiver.

STATEMENT OF THE CASE

1. What appears obvious to some might not to others. Therefore, while the statement of the case here remains mostly the same as in the appellant's brief (Reynolds Brief), there is a need to flesh out the meaning of "Administrative appeals continued over much of the next year and a half. None of the replies averred that either (1) anybody in the respective office conducted a search for records, or (2) any such search, if one occurred, was reasonably calculated to uncover all relevant documents, or (3) a search took place but produced no responsive records," Reynolds Brief, 2, because doing so will provide this Court a more accurate and complete understanding

of the facts, thereby overcoming any misapprehensions.

a. As the record clearly shows, the first administrative appeal on June 12, 2007 to the Office of Information Privacy (OIP) at the USDOJ, Complaint (Compl.) ¶ 2 and ex. E; Declaration of Dione Jackson Stearns (Stearns decl.) ¶ 4 and ex. 4; Defendant-Appellee Appendix (DA) DA-29, DA-38, and DA-72, and DA-117, challenged the denial by the EOUSA and OIG of the FOIA requests. *See* Compl. ¶¶ 1b-1d, ex. C, ex. d, and ex. e; Stearns decl., 3-4, and ex. 3; DA-30-DA-31, DA-38, DA-66-DA-69, and DA-115.

b. In a letter, dated June 22, 2007, Compl. ¶ 3, ex. F; DA-74, DA-119, Priscilla Jones, Supervisory Administrative Specialist at the USDOJ OIP, acknowledged receipt of the administrative appeal of the FOIA request denials, informed me of their backlog, assigned me a number, told me to use that number in any correspondence, and said I would be notified of a decision once it was made. *Id.* Janice Galli McLeod, Associate Director (AD) of the OIP, finally made that decision in the penultimate paragraph of the December 9, 2008 memo. Compl., 5-6, and ex. P; DA-41-DA-42, DA-95-DA97, DA-144-DA-147.

c. Meanwhile, by letter dated September 28, 2007, Compl. ex. G; DA-76, DA-121, Janice Galli McLeod, the OIP AD wrote:

"After carefully considering your appeal, and as a result of discussions between EOUSA personnel and a member of my staff, I am remanding your request to EOUSA for a search for responsive records. If EOUSA locates responsive records through this search, it will send any and all releasable portions of them to you directly, subject to any applicable fees. You may appeal any future adverse determination made by EOUSA." As I said, she put a decision on my administrative appeal on hold.

i. The EOUSA Assistant Director (AD) responded by letter dated December 7, 2007, writing, among other things, "Normally, search time is charged at a rate of $28 per hour after the first two hours which are free, and duplication fees are $0.10 per page after the first 100 pages which are free." Compl. ex. H; DA-78, DA-123.

ii. In the first sentence of another letter dated December 21, 2007 the EOUSA AD wrote, "We are currently searching for references in our case management database for information responsive to your FOIA/PA request (for records on yourself)." Compl. ex. J; DA-82, DA-126.

d. After a very confusing series events – which could lead a reasonable person to

conclude that those to whom the FOIA requests had been made had no intention of providing any records that there might be – that included a fee assessment, a fee-waiver denial and administrative appeals of them, the OIC AD, Janice Galli McLeod, in a letter dated December 9, 2008, a year and a half after my initial request, did two things: (1) she upheld the fee-waiver denial; and (2) in the penultimate paragraph she denied my appeal of the initial February 22, 2007 FOIA request referred to in ¶ 1. c. *supra*, Compl. ex. A, DA-49-DA-58, thereby acknowledging I had exhausted the administrative remedies regarding the EOUSA FOIA request denial. Compl. 5-6, and ex. P; DA-41-DA-42, DA-95-DA97, DA-144-DA-147.

e. In doing so, however, on the one hand she suggested that the EOUSA had conducted a two-hour search, while on the other, she said there was no requirement to conduct a search in response to questions. Compl. ex. P; DA 95-DA-97. Yet there was no mention of the results of the search and no records were forthcoming, despite her assertion in September 28, 2007 letter referenced in ¶ 1. c. *supra* that the EOUSA would send me any records it found that were not subject to fees, which the first two hours

and 100 pages were not. DA-96-DA97, DA-146-DA147.

f. Galli McLeod denied the administrative appeal of the April 22, 2007 FOIA request, in part because "federal agencies" were not required "to answer questions," Compl. ex. P; DA-97. However, aside from explicitly asking for "any 302 reports" concerning him, Compl. ex. A; DA-49, "any records, to include visual and/or acoustic information and/or written materials/data" referring to the events described in the FOIA requests, Compl., ex. A; DA-51, DA-54, and DA-57, Reynolds also challenged her determination in the complaint. Compl., ¶ 10.d.; app. 9a; DA-46.

2. In addition to fleshing out the meaning of the statement referred to in ¶ 1. *supra*, there is a need to mention the summary order (Order) by this Court filed on August 26, 2010 affirming the decision below to uphold the fee-waiver denial and ruling that Reynolds had not exhausted administrative remedies regarding the adequacy of the search. Order.

POINTS OF FACT AND LAW OVERLOOKED

3. This Court and the one below overlooked or misapprehended important points of fact in this case.

a. Reynolds exhausted his administrative remedies before suing by filing three administrative appeals with the USDOJ OIP, appealing the EOUSA and OIG FOIA request denials, Compl. ex. E; DA-71, the

EOUSA fee assessment, Compl. ex. K; DA-83, and the EOUSA fee-waiver denial. Compl. ex. N; DA-90

i. Whereas Reynolds and the OIP AD Janice Galli McLeod agree that Galli McLeod deferred her decision on the June 22, 2007 administrative appeal to the OIP challenging the denial by the EOUSA of the FOIA requests until December 9, 2008 (essentially taking the position that it was the last administrative appeal I submitted) and that her decision to uphold the EOUSA FOIA requests denial did not cover the two challenging the fee assessment and fee-waiver denial, respectively, Compl. ¶ 2 and ex. E; Stearns decl. ¶ 4 and ex. 4; DA-29, DA-38, and DA-72, and DA-117, Compl. ¶¶ 1b-1d, ex. C, ex. D, and ex. E; Stearns decl., 3-4, and ex. 3; DA-30-DA-31, DA-38, DA-66-DA-69, and DA-115; Compl., 5-6, and ex. P; DA-41-DA-42, DA-95-DA97, and DA-144-DA-147, the defendant, the rulings below, and the summary order by the panel of this Court overlooked and/or misapprehended this.

ii. Reynolds challenged Galli McLeod's administrative appeal denial (in which she asserted there was no requirement to conduct a

search for records, while at the same time claiming the EOUSA had conducted the free initial two-hour search), Compl. ¶ 10 d, ex. A, ex. P; app. 9a, 23a-25a; DA-46, DA-95-DA-97.

iii. The requests sought (a) "any 302 reports" concerning him, Compl. ex. A; DA-49, (b) "any records, to include visual and/or acoustic information and/or written materials/data" referring to the events described in the FOIA requests, Compl., ex. A; DA-51, DA-54, and DA-57, and (c) he alleged his submissions were "requests for records," Compl. ¶ 10 d, ex. A; app. 9a; DA-46.

iv. Judge Stein accepted "as true all material facts alleged in the complaint," committing to resolve "all ambiguities and ... inferences" in Reynolds' favor, opinion and order dated July 7, 2009 of United States District Judge (USDJ) Sidney H. Stein (Stein op. and ord.), 3; app. 30a; DA-150.

v. He nonetheless granted the defendant summary "judgment as a matter of law," Stein op. and ord., 6; app. 33a; DA-153, even though the defendant presented no factual allegations to counter Reynolds' assertion that he

exhausted his administrative remedies regarding the FOIA request and appeal denials. Additionally, in its summary order of August 26, 2010, this Court affirmed the lower court's decision. Order

vi. The district court accepted as fact, Stein op. and ord., 3; app. 30a; DA-150, Reynolds' allegation, Compl. ¶ 2, that OIG' FOIA request denial was included in the administrative appeal, and the defendant provided no factual allegations to counter that, thereby removing any basis for a judgment in his favor as a matter of law.

b. The August 26, 2010 summary order of this Court has the effect of requiring him to appeal the EOUSA and OIG FOIA request denials to the OIP twice instead of once in order to satisfy the exhaustion-of-administrative remedies requirement for suing in federal court. Order, 3.

4. This Court and the one below overlooked or misapprehended important points of law in this case as well.

a. This Court reviewed the "agency's determination on the fee waiver issue *de novo*, but only with reference to the record before the agency," Order, 2, citing *Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 814 (2d Cir. 1994). To the extent any records that the agency found in its search were not included in the *de novo*

review by this Court might affect the fee waiver ruling over whether their release was in the public interest, Compl. ex. J, ex. P; DA-82, DA-96, *id.*; the summary order was premature insofar as it was based on an incomplete agency record.

b. Reynolds exhausted the requisite administrative remedies with respect to the EOUSA and OIG FOIA request denials before suing, *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 61, (D.C. Cir. 1990), and the defendant offered nothing factual to counter that when moving to dismiss the case, *Nichols v. U.S.* C.A. 10 (N.M.) 1986, 796 F.2d 361. Therefore, he was entitled to the relief sought in the complaint, at least as it pertained to certification of the conduct of a search. Thus, the lower court erred in granting the defendant's motion; because, as this Court has ruled, "A case should not be dismissed unless the court is satisfied that the complaint cannot state any set of facts that would entitle the plaintiff to relief." *Miller v. Wolpoff & Abramson, L.I.P* 321 F3d 292, 300 (2nd Cir. 2003); *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005), 350, 355; Patterson v. County of Oneida, 375 F.3d 206, 219 (2d Cir. 2004).

   i. Janice Galli McLeod essentially stipulated I exhausted the administrative remedies in the December 9, 2008 memo but said

there was no requirement to conduct a search for records even though earlier in the same memo she said that the agency informed me it had searched for the records. Compl. ex. P: DA-96-DA-97. The FOIA was enacted in order to "promote honest and open government and to assure the existence of an informed citizenry [in order] to hold the governors accountable to the governed." *Grand Cent. P'ship, Inc. v. Cuomo,* 166 F.3d 473, 478 (2d Cir.1999). Thus, "in keeping with the spirit and the text of the FOIA and its presumption in favor of disclosure," *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005), 350, 355, it was incumbent upon the Galli McLeod to direct EOUSA to release any records it may have found or, in the alternative, certify its search found no responsive records.

ii. Paying the fees or narrowing the search is not required before receiving any records from the first two hours of search, because I appealed the refusal to search on June 12, 2007, Compl. ex. E: DA-72, and the OIP ruled on that separately from the fee-waiver denial. Compl. ex. P: DA-97.

Because "the spirit and the text of the FOIA" is " in favor of disclosure," *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005), 350, 355, it was incumbent upon the EOUSA to release any records it found without requiring Reynolds essentially to submit another FOIA request, as though he were not serious in the first one. Requiring him to submit two requests instead of one, Order, 3, in order to exhaust administrative remedies denies equal protection of the law. U.S. Const. Amend. V; *Adarand Constructors, Inc. v. Pena, Secretary of Transportation, et al* - 515 U.S. 200 (1995); *Buckley v. Valeo*, 424 U. S. 1 (1976). Additionally, requiring two administrative appeals of FOIA request denials before administrative appeals are exhausted denies equal protection of the law for the same reason. *Id.*

iii. The lower court abused its discretion, because the defendant was not entitled to summary judgment as a matter of law. Reynolds challenged Galli McLeod's administrative appeal denial in the complaint, Compl. ¶ 10 d. ex. A, ex. P; app. 9a, 23a-25a;

DA-46, DA-95-DA-97. Moreover, his FOIA requests sought (a) "any 302 reports" concerning him, Compl. ex. A; DA-49, (b) "any records, to include visual and/or acoustic information and/or written materials/data" referring to the events described in the FOIA requests, Compl., ex. A; DA-51, DA-54, and DA-57, and (c) he alleged his submissions were "requests for records." Compl. ¶ 10 d, ex. A; app. 9a; DA-46. Since Judge Stein accepted "as true all material facts alleged in the complaint," committing to resolve "all ambiguities and ... inferences" in Reynolds' favor, Stein op. and ord., 3; app. 30a; DA-150, citing *Patterson v. County of Oneida*, 375 F.3d 206, 219 (2d Cir. 2004), he erred in granting the defendant summary "judgment as a matter of law," Stein op. and ord., 6; app. 33a; DA-153. The defendant presented no factual allegations to counter Reynolds' assertion that he exhausted his administrative remedies regarding the FOIA request and appeal denials. *Miller v. Wolpoff & Abramson, L.L.P.*, 321 F3d 292, 300 (2d Cir. 2003); *National Council of La Raza v. Depart. of Justice* 411 F.3d 350 (2d Cir. 2005).

350, 355. This Court nevertheless affirmed the lower court's decision in its summary order of August 26, 2010. Order.

c. There is no basis in the record for this Court to evaluate the FOIA search, Order 3, because of the failure by the EOUSA and OIP to fulfill the requirement to have either the person searching for records or "an agency employee responsible for supervising a FOIA search" to submit an affidavit, *Radcliffe v. I.R.S.*, S.D.N.Y., 2008, 536 F.Supp. 2d 423, demonstrating "beyond material doubt that its search was reasonably calculated to uncover all relevant documents." *Dinsio v. Fed. Bureau of Investigation*, No. 05 Civ. 6159L, 2007 U.S. Dist. LEXIS 60269, at *3 (W.D.N.Y. Aug. 16, 2007) (quoting *Students Against Genocide v. Dep't of State*, 257 F.3d 828, 838 (D.C.Cir.2001). "In response to a challenge to the adequacy of its search, the agency [failed to] ... provide a 'reasonably detailed affidavit, setting forth the search terms and type of search performed, and averring that all files likely to contain responsive materials ... were searched.' *Smith v. Fed. Bureau of Investigation*, 448 F. Supp. 2d 216, 220-21 (D.D.C.2006) (citing *Oglesby v. United States Dep't of Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)); *Hadden v. Bureau of Prisons* 2008 WL 5429823 (S.D.N.Y).

d. To the extent this petition causes this Court to examine the District Court's ruling that the complaint was frivolous, I would simply rely upon the appellant's brief, Reynolds Brief, 4-5, 9, concerning that ruling and see no benefit in rewriting it here.

CONCLUSION

12. WHEREFORE, appellant respectfully prays that:

a. This Court reverse the panel's summary order and grant the appellant all the relief sought in the complaint, the motion to reconsider, and the appellant's brief.

By: "s/James Reynolds"
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Appendix BB: Constitutional and Statutory Provisions

A. CONSTITUTIONAL PROVISIONS

U.S Const. Art. 1

Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and Post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;
To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
To provide and maintain a Navy;
To make Rules for the Government and Regulation of the land and naval Forces;
To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
To provide for organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers,
and the Authority of training the Militia according to the discipline prescribed by Congress;
To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United
States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines,

Arsenals, dock-Yards, and other needful Buildings; And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.
No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind
whatever, from any King, Prince or foreign State.
U.S. Const. Art. 2.
Section 1
The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President chosen for the same Term, be elected, as follows:
Section 2
The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices, and he shall have Power to Grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.
Section 4

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article 3.

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district

wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. Const. Amend. XIII

1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

2. Congress shall have power to enforce this article by appropriate legislation.

U.S. Const. Amend. XIV § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. STATUTORY PROVISIONS

5 U.S.C.§ § 552(a)(4)(A)

(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests

under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—
(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or
(II) for any request described in clause (ii) (II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.
(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.
(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.
(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That

the court's review of the matter shall be limited to the record before the agency.

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292 (c) and (d) and 1295 of this title.

28 U.S.C. § 1331. Federal question
The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.